SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
----------X
FOX VARIAN,

Plaintiff,

-against- Index No.:
61150/2023

KENNETH EINHORN, PhD, CARMEL PSYCHOLOGICAL ASSOCIATES, P.C., SIMON H. CHIN, M.D. and CAREMOUNT MEDICAL, P.C.,

Defendants.
----------X

March 29, 2024
10:34 a.m.

VIRTUAL EXAMINATION BEFORE TRIAL of KENNETH EINHORN, PhD, a Defendant herein, taken by the respective parties, pursuant to Order, held via Zoom Videoconference, before Nicholas Buckley, a Notary Public for and within the State of New York.

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, and in compliance with Rule 221 of the Uniform Rules for the Trial Courts:

The parties recognize the provision of Rule 3115 subdivisions (b), (c) and/or (d). All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the C.P.L.R.;

IT IS FURTHER STIPULATED THAT every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by C.P.L.R. Rule 3115 or by this rule,

during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning;

IT IS FURTHER STIPULATED THAT a deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of a court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in C.P.L.R. Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement on the basis therefore. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition;

IT IS FURTHER STIPULATED THAT an attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or to determining whether the

question should not be answered on the grounds set forth in Section 221.2 of these rules, and, in such event, the reason for the communication shall be stated for the record succinctly and clearly;

IT IS FURTHER STIPULATED THAT the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such objections or motion at the time of trial of this action, and is hereby reserved;

IT IS FURTHER STIPULATED THAT this examination may be signed and sworn to by the witness examined herein before any Notary Public, but the failure to do so or to return the original of the examination to the attorney on whose behalf the examination is taken, shall not be deemed a waiver of the rights provided by Rule 3116 and 3117 of the C.P.L.R., and shall be controlled thereby;

IT IS FURTHER STIPULATED THAT the certification and filing of the original of this

examination are hereby waived; AND THAT the questioning attorney shall provide counsel for the witness examined herein with a copy of this examination at no charge.

VIDEOCONFERENCE STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between counsel for all parties present that Pursuant to C.P.L.R. section 3113 (d) this deposition is being conducted by videoconference, that the court reporter, all counsel, and the witness are all in separate remote locations and participating via videoconference (LegalView/Zoom/ WebEx) meeting under the control of Lexitas Court Reporting Service, that the officer administering the oath to the witness need not be in the place of the deposition and the witness shall be sworn in remotely by the Court Reporter after confirming the witness's identity, that this videoconference will not be recorded in any manner, and that any recording without the express written consent of all parties shall be considered unauthorized, in violation of law, and shall not be used for any purpose in this litigation or otherwise.

IT IS FURTHER STIPULATED that exhibits may be marked by the attorney presenting the

exhibit to the witness, and that a copy of any exhibit presented to a witness shall be e-mailed to or otherwise in possession of all counsel prior to any questioning of a witness regarding the exhibit in question. All parties shall bear their own costs in the conduct of this deposition by videoconference.

* * * *

KENNETH EINHORN, PhD

K E N N E T H E I N H O R N, P h D, after having first been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

THE REPORTER: Please state and spell your name for the record.

THE WITNESS: First name Kenneth, K-E-N-N-E-T-H; my last name Einhorn, E-I-N-H-O-R-N.

THE REPORTER: Please state your present address for the record.

THE WITNESS: 3105 Muir Court, Yorktown Heights, New York 10598.

EXAMINATION BY

MR. FIEDLER:

Q. Is it Mr. Einhorn or Dr. Einhorn?

A. It's Dr. Einhorn.

Q. Okay, Dr. Einhorn. My name is Duane Fiedler, and I'm the attorney representing Fox Varian today. I'm going to be asking you a series of questions throughout the day today.

I would ask you please to listen very carefully to the questions that I ask you, and I do not expect or want you to answer any question

unless you feel comfortable and confident that you fully under the question that I'm asking you before you answer. If you don't, let me know and I will be more than happy to rephrase the question, speak louder or do whatever is necessary so that you know what you're answering before you answer.

A. Okay.

Q. And to be even more specific, if this case goes to trial -- I don't know if it will or it won't. But if the case goes to trial, this transcript from today's deposition will be used as a tool by me to cross-examine you with. And one of the ways that that's done is I would say to you, you know, Doctor, do you remember being asked this question and giving this answer on, for example, page 57, line 7? And I'll read it to you.

And the reason for my instruction is to avoid at the time of trial you being able to say to me on the stand, Mr. Fiedler, if I answered you that way, I could not have understood the question. So that's basically the reason for that instruction.

A. Okay.

Q. Okay. Now, tell me about your background and training.

A. Are you asking me just to tell you --

Q. From college.

A. From college, I did my undergrad at the University of Iowa. I have a PhD from Marquette University. I've been licensed in New York State since 2003 as a psychologist.

Q. You must be very interested in the NCAA this year.

A. I am very interested, yes.

Q. Okay. Good luck.

What was your PhD in?

A. Clinical psychology.

Q. And what did you do to get licensed?

A. I completed a post-doc in Boston working with a program that was working with the Office of Mental Health.

Q. And did you pass that exam the first time?

A. Yes.

Q. And that entitled you to call yourself what?

A. A psychologist.

Q. Okay. Any further training or education?

A. I mean, I've been to lots of trainings but no formal degrees or anything like that.

Q. Okay. When you say "I've been to lots of trainings," tell me what you mean by that.

A. I have been trained in functional family therapy, multisystemic therapy and something that I believe is now called Treatment Foster Care Oregon but was originally called multidimensional treatment foster care.

Q. Can you tell me what each of those means.

A. Sure.

FFT is functional family therapy. It's an intervention that's used with families who at least one of the children is either involved in juvenile justice or the family has been identified as being at risk for losing their children through CPS or down in the city ACS.

MST is multisystemic therapy. It was originally developed to work with kids who had been adjudicated delinquents. It's also now being

used in a number of different settings, from treating people with substance use problems, to treating families, to treating individuals with varying degrees of mental health issues.

Multidimensional treatment foster care or Treatment Foster Care Oregon is a very specialized program for children who cannot return home for safety concerns, who have significant behavior problems, to teach them social skills and life skills to avoid recidivism and to, you know, attend school and kind of general expectations we have of children.

Q. Any other specialized training that you just -- such as what you've just gone over that you haven't told us about?

A. Not formally. I do sit with a peer administration group for something called a acceptance commitment therapy and have done a number of continuing ed classes on acceptance and commitment therapy.

Q. Tell me what that's about?

A. Acceptance and commitment therapy is about -- it's kind of a second- or third-generation cognitive behavior therapy that

focuses on helping people identify the life they want to live and developing the skills they need to manage their own experiences so they can live that life.

Q. Are you are you trained in adolescence developmental psychology?

A. Yes.

Q. Now, have you ever had any specific training in the health of transsexual, transgender and/or gender-nonconforming people?

A. Not formally, no.

Q. When you say "formally," are you suggesting that you've had any sort of informal training in that regard?

A. I have a connection to the Gay Center in the city and have certainly spoken with them on occasion about some of the issues that might be encountered.

Q. Tell me about that.

A. I'm just having conversations about, you know, typical situations that might come up that would be different from somebody, a young person who is not struggling with, amongst other things, transgender issues.

Q. Correct me if I'm wrong, but that sounds like you helping them as opposed to them instructing you.

A. No. They kind of just gave me -- you know, I ask them questions. They gave me some information. You know, generally speaking, just talking about being supportive, using the correct pronouns, you know, directing people to the supports that they might need if they don't already have them.

Q. Is that what you help them with or what they help you with?

A. That's what I -- I don't help the -- the center with anything. I haven't spoken with them in a little bit of time. But that's what they helped me with, make sure I knew what to do and continued to do with clients I have who do identify as gender-nonconforming.

Q. Tell me what kind of center this is.

A. The Gay Center is a support center. They support all kinds of, you know, issues related to people who are involved or are in the LBGTQ community. They do counseling. They -- they are -- they are experts in working with that

population.

Q. And did -- what type of professional staff do they have that you've spoken to?

A. I've spoken -- I've spoken to my friend who's the director of counseling. He has a master's degree in social work and other training related to working with the LBGTQ community.

Q. And what is his name?

A. Peter Keres (phonetic).

Q. When would be the first time that you would have spoken to him in this regard?

A. He and I used to work together at a child welfare agency. 2008 maybe.

Q. Until when?

A. The last time I spoke to him -- the last time I had interaction with him was in 2018.

Q. Okay. And with what frequency during that period of time -- during that ten-year period of time would you talk to him?

A. Until he left the agency, pretty daily. After that he and I spoke that first year maybe a few times a year and then really only if I reached out to him.

Q. Can you point to anything else other

than what you've just identified with your friend at the Gay Center that you would say educated you, schooled you or in any way trained you for the treatment of nonconforming or gender-nonconforming people?

A. I don't remember anything at this time, no. Sorry.

Q. My client seems to recollect that while you were treating my client you -- you had two other gender-nonconforming or transgender patients; is that accurate?

A. I don't remember off of top of my head exactly, but that sounds correct.

Q. Okay. So my client would make a total of three?

A. At that time, yes.

Q. Okay. And had you treated any such patients prior to those three?

A. Yes.

Q. When did you first go into practice?

A. I mean, I was licensed in 2003. I had my first professional job in mental -- the mental health field in Milwaukee, Wisconsin in 1995.

Q. And approximately how many

gender-nonconforming people had you treated as their psychologist other than the three we've just referenced?

A. I mean, I would imagine it's -- I don't have exact numbers. I imagine it's more than ten. It's not more than 20.

MR. KORNFELD: Are you talking about patients who have undergone transition, Duane, or just in general?

MR. FIEDLER: Just in general, gender-nonconforming. We'll get to that one in a second.

Q. Okay. And of those -- of the two people that you mentioned that you were treating while you were treating my client, were any of those transgender --

A. Yes.

Q. -- or transsexual?

A. Yes.

Q. And did either of those two do either top or bottom surgery?

A. Nobody that I've ever treated has had bottom surgery. I'm a hundred percent certain. Were going back a little while, but one of them

definitely had top surgery.

Q. And was that at your recommendation?

A. No. But they had top surgery during the time that I worked with them.

Q. Okay. And of the no greater than 20 non -- gender-nonconforming people that you treated prior to that, were any of them being treated for trans -- being transgender or transsexual, if you can recall?

A. Can you reframe the question? I'm sorry.

Q. Sure.

The 20 -- you had said not more than 20 --

A. Yeah.

Q. -- since 1995.

A. Yeah.

Q. Of that not more than 20, were any of those people being treated for being transgender?

A. I'm -- I'm having a hard time answering the question because I would not describe the treatment as being for being transgender.

Q. Were any of them diagnosed with gender dysphoria?

A. Yes.

Q. Approximately how many of those approximately not more than 20?

A. I can't recall. Sorry.

Q. Okay. And if you went through all of your records and redacted the actual names -- because obviously we're not entitled to that -- would you be able to determine how much less than 20 it was?

A. Probably not because the diagnoses are specially before we were on an electronic record. The diagnoses were made once and then billing used them, and I don't think they were ever changed.

Q. During the time that you were treating my client or even before that, did you ever subscribe to any journals or other publications that were specifically about gender-nonconforming people?

A. No.

Q. Now, during the entire time -- I mean, we're going to go through visit by visit, which is going to be kind of painful.

Let me ask you this just in advance. I'm assuming you can't remember one visit from the

other.

A. That's probably an accurate assumption.

Q. Right. Okay. So we'll try to do it in an efficient way. But in general I want to ask you about your recordkeeping practices, if you will.

A. Okay.

Q. And is it your custom and practice to document what you feel is of psychological significance with respect to your treatment of a patient during the visits?

A. Sometimes.

Q. Let me ask it this way then because I'm not asking if you, you know, do the exact same thing every single time, every single visit.

A. Right.

Q. What I'm asking you is, just in general would you -- would you say that it is your routine, custom and practice to more often than not document in the chart something that occurred or was discussed that you felt was of significance? More often than not.

A. Not -- not necessarily, no.

Q. Okay. Tell me what you do try and --

what you do endeavor to chart more often than not as opposed to what you don't.

A. I write the notes to me largely for me to be able to look at the notes, to remind myself what happened in the previous session so that I can have that information for the next session.

Q. And would you say that one of the reasons that you do that is so that if something that you feel is of any significance occurs, you want to know about that the next time the patient comes in rather than just committing it to memory?

A. Yeah. I -- I guess. I don't always write down every significant thing that's discussed. Because if I can remember it, I don't put it down.

Q. How do you know what it is you can remember and what you can't remember?

A. I mean, you get to know people. Sometimes they're going to say things to you that are just -- that are memorable in their own right. Our records are reviewed pretty regularly by insurance companies. And I don't always want every little thing, sometimes very personal information, to be available for someone to read

it.

Q. Got it. So one of the benefits of being young. I can tell you're going to be writing down a lot more as you get older.

Now, during the entire time that my client was under your care, did you ever refer her to a psychiatrist?

A. I talked about it on numerous occasions. When -- when Fox was younger, I mostly spoke about it to Fox's mom. She made it very clear every time we talked about that that that was not something she would consider. She had a lot of expressed concerns about the different medications that might be used.

When Fox got older, we talked about it on numerous occasions. And at one point I did set them up with a very good nurse practitioner in our practice who prescribed Fox Lexapro. And my recollection is that Fox tried it for two or three days. The medication made Fox nauseous and they stopped taking it.

Q. My question was a psychiatrist, not a nurse practitioner. Did you ever refer her to a psychiatrist?

A. I referred them to our psychiatric component. I don't get to pick whether it's a psychiatrist or a nurse practitioner, as is the case in lots of places. It's very hard to find a child psychiatrist who takes insurance. They're just aren't that many of them.

Q. During the entire pendency of my client's treatment with you, did you ever refer her to another psychologist, social worker or other healthcare provider for a second opinion as it related to any of your recommendations, including top surgery?

A. I encouraged Fox to go to -- initially it was the Gay Center expressed, as I recall, that she did not want to drive to the city. And they found a similar program in Albany, and I strongly encouraged them to go.

Q. Did they go?

A. I believe they went twice.

Q. Okay. Do your records -- I assume you've reviewed all of your records in preparation for today.

A. Yes.

Q. Do your records reflect any of that?

A. They reflect the first visit.

Q. Okay. Did you -- at any time during the pendency of her treatment, did you ever -- did you refer her to an endocrinologist?

A. No.

Q. Why is that?

A. I'm a psychologist. I'm working to treat her -- her mental health very specifically, as is evidenced in the record, working to try and help them develop better emotional regulation strategies.

Q. I'm not sure -- I understood that.

Are you saying as a psychologist it's not your role to refer the patient to a medical doctor?

A. Generally speaking, I don't refer patients to medical doctors except a psychiatrist if we've already talked about it and we've agreed it's the right thing to do.

Q. And does that include transgender and gender-nonconforming people?

A. Yes, that's true.

Q. Are you familiar with the standards of care for the health of transsexual, transgender

and gender-nonconforming people that is published by the World Professional Association for Transgender Health?

A. I am familiar.

Q. And were you familiar with those standards of care during the time you were treating this patient from October of 2018 right up until the time of her top surgery?

A. Yes.

Q. Do you regard those standards of care as relatively authoritative?

A. No.

Q. Why not?

A. Because I think that -- I think that clients need --

MR. KORNFELD: Hold on. Camera got screwed up. One second.

MR. FIEDLER: Take your time.

MR. KORNFELD: Okay. It's back.

A. I think each client, their individual needs need to be considered.

Q. Did you at times in the course of your practice reference those standards of care to assist you with treatment?

A. I did sometimes. As I mentioned, at other times I did speak to my friend at the Gay Center.

Q. Did you ever consult your friend at the Gay Center with respect to the treatment of my client?

A. Only in that I had informed him that his mom would be contacting -- or her mom would be contacting him. I also know that that contact never happened.

Q. Okay. That was the extent of your involvement of your friend?

A. With this -- with this specific client, yes.

Q. Okay. The standards of care has a section which is entitled Roles of Mental Health Professionals Working with Children and Adolescents with Gender Dysphoria. Are you aware of that?

A. Yes.

Q. And while my client was under your care, would you consider my client an adolescent?

A. Yes.

Q. And it states that assessment and

psychosocial interventions for children and adolescents are often provided within a multidisciplinary gender identity specialty service. Now, we can agree that you were not that, correct?

A. Correct.

Q. Then it says if such a multidisciplinary service is not available, a mental health professional should provide consultation and liaison arrangements with a pediatric endocrinologist for the purpose of assessment, education and involvement in any decisions about physical interventions. Now, I take it that you don't agree with that.

A. I didn't do it. I don't know if I agree with it or not.

Q. Well, do you agree with it?

A. Sometimes. Probably most of the time.

Q. So tell me why you didn't do it in my client's case.

A. I found my experience of your client was that it was hard to earn her trust, and I focused my work with her on earning and maintaining that trust. And I guess my experience

of your client was that if they were not necessarily trusting of the person they were talking to, the purpose of that conversation oftentimes either didn't happen or was not taken in the way it was -- I guess, would have been intended.

Q. Do you feel with any degree of confidence that you ever did gain my client's trust?

A. I feel that I did.

Q. And at what point?

A. I'm going to say -- if you don't mind, I just want to take a quick look at the record.

Q. You can do that whenever you so choose, so don't feel like you can't.

A. Just give me one second.

So I met your client in --

MR. KORNFELD: Don't read it out loud. Just look at the records and then --

A. Around November of 2018.

Q. My question was, when do you feel like you gained her trust?

A. Around November of 2018.

Q. When did you start seeing her?

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A. July of 2017.

MR. FIEDLER: Oh, boy. I don't have any records before October of '16, I don't believe, except for one assessment date of June 23 of '17. But we'll -- do you have records there from June of '17 to October of '18?

MR. KORNFELD: Hold on. Let me look.

MR. FIEDLER: Because my -- what I have is -- I have the initial assessment date of June 23, '17. And then the next visit after that, as I'm scrolling down, is -- hold it. Maybe I do.

Yeah. Okay. Then it starts with July of '17. Okay. I got it.

MR. KORNFELD: So you take back everything you said?

MR. FIEDLER: Yeah, I got it. That was my bad. That was my bad.

Q. Okay. And when -- so when did you say you think you gained her trust?

A. Around November of 2018.

Q. Okay. And what did you -- did you have any feeling as to what you felt was responsible for that?

A. He started sharing that he wanted to be

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called Gabriel.

Q. Okay. Now, what was -- in June of -- let's go -- start from June 13 of '17 -- June 23 of '17.

A. Okay.

Q. The client's name then is Bella Basile?

A. Yes.

MR. KORNFELD: Hold on. You said June of 2017?

MR. FIEDLER: Yeah, it's the first page. It says CPA, initial SS.

MR. KORNFELD: Hold on. Bear with me a second.

MR. FIEDLER: Take your time.

MR. KORNFELD: Is this -- is this backwards or --

THE WITNESS: I think it's backwards.

MR. KORNFELD: What's the date of this note? Okay.

THE WITNESS: Yeah, that's it. Right there.

MR. KORNFELD: That's it. All right. June 23rd of '17.

Q. Okay. Now, Bella, I assume that's --

that was a female name?

A. Yes.

Q. Okay. And who fills this out?

A. I filled out the initial assessment.

Q. What does CPA stand for?

A. Carmel Psychological Associates.

Q. Okay. And what was Carmel Psychological Associates?

A. My employer at the time.

Q. And for over what period of time were you employed by them?

A. I was employed by them until they were purchased by Life Stance. I'm not going to recall the exact date. It was sometime in 2018.

Q. Okay. And at that time you -- you became employed by Life Stance?

A. Yes.

Q. And what is their technical corporate name, if you know?

A. I think it's Life Stance Health.

Q. It says under client identification that she was homeschooled last year. Do you know why she was homeschooled?

A. I believe that there were issues. I

don't recall the specific issues at the school that she had been attending. I'm not sure if those issues were financial issues, that the family couldn't afford the school or if there were other issues. I'm sorry.

Q. Okay. Then it says presenting problems --

A. Yes.

Q. -- and you say lots of forensic custody issues. What did you mean by that?

A. There was a lot of back-and-forth between parents regarding who was going to be the custodial parent.

Q. Okay. And then it says her dad was narcissistic, question mark. What did you mean by that?

A. I meant that he was described to me as narcissistic either by Clare or Bella or both. I don't recall. And the question mark was I was summarizing the conversation, and obviously people have perceptions of people that may or may not be true.

Q. And then with respect to Bella, you note various diagnoses that she came to you with.

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One was anxiety, correct?

A. Yes.

Q. Another was depression, correct?

A. Yes, yes.

Q. And another was that she was tested as being on the spectrum?

A. Yes. And there's a question mark next to the spectrum because she didn't consistently present as somebody on the spectrum.

Q. Does that mean that you were doubting the testing?

A. It means that I didn't -- I didn't know what to think. I wasn't going to just turn my head off and say the testing was accurate, so I just put a question mark there to -- again, it's for me, because I'm the one reading the note. So it's just a way of me saying I don't know about this one.

Q. But we can agree that based on the testing itself, she was on the spectrum?

A. Yeah.

Q. And that was -- that was testing that was done, neuropsychological testing that was done at Carmel, correct?

A. Correct.

Q. And that also showed that she was of low intellectual functioning, correct?

A. Correct.

Q. Shows she had low executive functioning, correct?

A. Correct.

Q. Now, when you have a patient that tests -- well, let's go through the rest of these first.

What is CPS? Child Protective Services?

A. Yes.

Q. Do you know what was -- it says they were involved at one point.

A. I don't recall the incident. They weren't involved at the time. I just know that they had been involved.

Q. So and then you said she has self-esteem issues when she came to you. What does that mean?

A. It means that she didn't think a lot of herself.

Q. Lots of drama over the custody. I

guess we talked about that already, right?

A. Yeah.

Q. She misses school a lot. Why, do you remember?

A. I don't off the top of my head. Sorry.

Q. Okay. And do you know what that behavior stuff was at Longview?

A. I would -- I don't. I could guess. I don't want to guess. I would --

Q. In any event, based upon this we can agree that she was a very troubled child that came to you with multiple problems?

A. Yes.

Q. And did -- was that challenging for you as a psychologist?

A. I -- yes, it was challenging as a psychologist. It's not uncommon in my caseload to have challenging behaviors.

Q. And when you have a patient that comes to you with anxiety and depression, would testing that places her on the spectrum, would these types of stressors like the custody issues and along with the problems in school that has also tested with, you know, low intellectual functioning, what

does that tell you in terms of how the therapy may go?

A. It tells me -- it tells me their current functioning in a much more descriptive way than if I didn't have the testing or if they had tested average in everything.

Q. Well, in patients such as this who come with all of these problems and low -- and they are -- have low intellectual functioning, do you tend to more likely doubt their decision-making than with patients that are very intelligent?

A. Sometimes. I mean, there's -- you know, there are limits to the testing. I'm just looking at the --

MR. KORNFELD: Don't read out loud.

THE WITNESS: Okay.

A. The answer to the question is the testing is a snapshot of someone in my opinion. The testing is a snapshot of how someone is currently functioning in this society. It doesn't necessarily capture how somebody would be functioning if they were doing better.

Q. What was your assessment, if you ever made one, with regard to her ability to function

intellectually?

A. I think the testing underestimated her talent.

Q. Explain that to me.

A. It means that I think that -- my experience was always, again, that you had to develop trust to get the most out of Fox. Testing is done over one or two days with somebody that you have no relationship with. She also -- she also, as it documented in the note, is missing a lot of school. And that's going to have an impact on intellectual test scores as well.

And then there's -- you know, at the time that I'm doing this assessment, I don't know these things. But then there's how the person ultimately presents, how they come to -- how they come to show their understanding of the world around them and stuff. It certainly -- my impression was that -- my impression while treating Fox is that the testing underestimated her ability in some regards.

Q. Now, while it's not listed here, would you agree that at some point you learned she had difficulties with anorexia?

A. She definitely had issues with dieting and weight. I never heard someone tell me that she had anorexia, and the weights that I were giving were never that low where that would be the diagnosis.

Q. And --

A. But I could also not have had all the information.

Q. Okay. And did she have attention deficit disorder, ADD?

A. I didn't diagnose her with it, and I did not do any assessment that would -- you would need to do to make that diagnosis.

Q. Okay. Now, under suicidality, it says she's not suicidal, correct?

A. At that time of the assessment?

Q. Yes.

A. Yes, correct.

Q. Well, I read through your notes from beginning to end. And I never once saw anything that mentioned suicidal or suicidal ideation, suicidal plans, suicidal attempts. Am I accurate about the terms that I've read?

A. No, no.

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Q. Tell me where it says that she was in any way suicidal.

A. There is -- I have to look to tell you the exact date of the full assessment I did.

Q. Take your time.

A. Okay.

(The witness perused the document.)

A. On November 11th of -- sorry -- November 11th of 2021.

Q. Oh, okay. So let's get on the same page for a second. That's my fault. I'm going to take the responsibility for that.

A. Okay.

Q. Her top surgery was December 16 of 2019, correct?

A. Yes.

Q. Am I correct in stating that nowhere in your record does it ever suggest in any way that she had suicidal attempts, ideation, thoughts or anything mentioned regarding suicide prior to December 16 of 20 --

A. At -- that's -- I mean, that's probably true. She did express on numerous occasions that she wanted to kill herself. She never had a plan.

She was not expressing those same statements in school.

Q. Now, from time to time in your chart, there are areas -- these are computer-entered -- these are computer-generated charts, correct?

A. Yes. For the most part.

Q. And some of it is self-populated, correct?

A. Correct.

Q. Now, I assume that if something changes you would make that change as opposed to -- as opposed to letting it self-populate inaccurately; is that a fair statement?

A. Sometimes -- when they first transitioned to a computer note, it wasn't so easy to do some of those changes as it became over time.

Q. Okay. But is it fair to state, Doctor, that if something changed you would make an effort to correct the note rather than allow it to self-populate, particularly if it was --

A. I --

Q. -- particularly if it was something that was significant?

A. Honestly sometimes because it was -- initially they were very cumbersome, and a lot of her treatment is with that first note.

Q. I don't understand what that means.

A. What I mean is -- what I mean is they transitioned to the electronic record in 2019. The first note was very cumbersome. They decided to run it for a while. There were lots of complaints and concerns expressed by many people who worked there, and they started revising it. It's become much easier over time to use.

So you're asking me if I would have gone in and tried to change things that are self-populating. At the beginning not all the time. It was -- it was very hard to do.

Q. And did there come a time where it became easier?

A. Yeah. The end of her treatment transitioned to a note that's more or less the note that we use now.

Q. How about up until the time of her surgery?

A. The surgery takes place in December of 2019. That would be right in the middle of the

transition.

Q. You're not talking about --

A. I mean -- not talking about her transition. I'm talking about on the -- kind of the acknowledgement that the note they had wasn't working and they needed to start revising it.

Q. Got it.

MR. KORNFELD: Can we just get like three minutes right now, a quick break?

MR. FIEDLER: Sure.

MR. KORNFELD: Thanks.

MR. FIEDLER: No problem.

(A recess was taken from 11:22 a.m. to 11:25 a.m.)

Q. So in these -- in the initial note it says a heading that says current danger potential, and it -- in each instance you write none reported or observed. That would be where you place if you thought she was suicidal, right?

A. Yes.

Q. And in the later notes I think it -- I don't have them in front of me because it's a different -- it's a different group of notes, but it's -- there's also a section that says -- that actually does say if the patient says a threat to

herself and then under that a threat to others. That's where you would put if she was suicidal, right?

A. Sometimes. As I said, my notes are for me. I'm always aware -- always worried about and assessing for safety. I'm --

Q. Okay.

A. I'm writing my notes so I can remember what happened the next time.

Q. Is there a difference between suicidality and suicide -- and suicidal?

A. What -- I don't even -- what do you mean?

Q. Is there a difference between somebody who's actually a threat to -- for suicide as opposed to somebody who's kind of acting out as ideation, as, you know --

A. Yes.

Q. -- acts --

A. Yes. Usually that's determined by someone having a plan, having access.

Q. Okay.

A. I don't recall Fox ever expressing a plan or having access to something that she could

use to kill herself. She was also under supervision.

Q. So I want to ask you this two ways then.

Can we agree that in all of your notes, up till and including the time of her surgery, there's nothing to indicate that she was suicidal?

A. Yes.

Q. And can we also agree, irrespective of the notes, that in your opinion up to the time of her surgery in December of 2019, you did not consider her to be suicidal?

A. I did not.

Q. And can we also agree that during that time she never threatened suicide?

A. No, no.

Q. No, she didn't or no, she would --

A. She would get upset and she would say, "I'm going to kill himself."

Q. Did you ever take that seriously?

A. Every time.

Q. Okay. And did you ever think she meant it?

A. I thought she meant it up until I

started asking questions about how she was going to do it or what she meant and got nothing about a specific plan or anything else, and the experience at times when she made those comments and Clare was in the session was that this is something that she does when she's upset.

Q. Okay. Are you aware of anything she ever did physically to herself that would lead anybody to believe that she was suicidal?

A. I don't recall anything.

Q. Okay. Did you ever state to her mom in words or substance that if she did not undergo top surgery she was at risk for committing suicide?

A. No.

Q. In any of your discussions with Clare, did you -- regarding whether or not to have top surgery, did you ever mention the topic of suicidal ideation, suicide or anything regarding suicide?

A. No.

Q. Now, let's go back to the actual record, if you would be so kind.

A. Okay.

Q. So after that initial assessment there

were numerous visits in 2017 I'd like you to review. We'll take 2017 altogether, if you will.

A. Okay.

Q. And the visits in 2017 look like they go from July 3 of 2017 up until the end of 2017. Tell us how you feel she was doing during that time.

A. I -- it's hard to characterize. She wasn't doing great.

Q. Tell me -- if you can, just summarize the -- the sessions in terms of, you know, how she was doing, what you discussed and what the plan would be.

A. Sure.

We talked a lot about school. We talked some about eating.

MR. KORNFELD: You're asking for a general overview?

MR. FIEDLER: Yes, yes. Thank you.

A. Yeah, we talked about school and about eating. And I'd try to work with Fox on developing some regulation strategies because things were great unless something happened that bothered her, and then things fell apart. And

that could be how she felt after eating or could be there's something they changed, something at school that she didn't expect to be changed.

Q. Now, in the year 2017 did she continue to be known as Bella Basile?

A. Yes.

Q. In the year 2017 did any issues arise with respect to gender?

A. No.

Q. Okay. So as far as gender was concerned, how did you consider Fox to be at that time?

A. It was not something that was -- that was on my radar as something that was an issue.

Q. Okay. Were you treating her for depression at that time?

A. Yes. For depression and a lot of anxiety.

Q. Okay. I guess you anticipated my next question, which was, did you treat her for anxiety at that time as well? And I guess the answer is yes.

And you were discussing with her the difficulty with her issues at school and

difficulty with her issues with her parents, correct?

A. Correct.

Q. Okay. Now let's go to 2018, please.

A. Okay.

Q. During the year 2018 did the gender issue ever arise?

A. It -- like I said earlier, the first time it comes up in my notes and to my recollection and also the first time that it -- it becomes something that at least is talked about at all is in November of that year.

Q. Your notes reflect that?

A. Yes. I'm --

Q. Tell me what your note says in that regard.

A. Sure.

MR. KORNFELD: I printed the record up. I'm trying to make it easier for us.

MR. FIEDLER: Oh, I've got to go to the other -- okay. I've got to do the same thing you're doing. I've got to switch to the other file. Hold on. The Bates-stamped one, right? Do you have a Bates-stamped copy of this one?

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MR. KORNFELD: We don't, actually. I mean, I should have -- we should have done that before the deposition, but. . .

(A discussion was held off the record.)

Q. So Doctor, is November 24, 2018, the visit that you're referring to?

A. I just want to make sure it didn't come up in session earlier.

Q. Sure. Take your time.

A. There's a big gap in the notes from October --

MR. KORNFELD: Just --

THE WITNESS: Okay.

A. Yeah, the first time it comes up is in that November 24th note.

Q. Okay. To kind of put this behind us, can we agree during the approximate -- I guess it's a -- it's almost a year and a half that you had been treating her from June of '17 to the end of November of 2018, the issue of gender was never discussed, never came up and was never suspected by you?

A. Yes.

Q. Okay. So this marked a new issue that

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was in addition to the other issues that had -- had been discussed, right?

A. Yes.

Q. Now, up until this point in time, November 24 of 2018, what progress, if any, do you think you had been making with respect to her depression?

A. Very little.

Q. Up to and including -- up to November 24 of 2018, what progress, if any, do you think you had been making with respect to her anxiety?

A. Just some -- there was -- there was some success around being at a school where there was a drama program.

Q. So when we get to November of '18, can we agree that she was still suffering from anxiety and depression?

A. Yes.

Q. Now, when she brought this issue up of gender -- by the way, did she bring it up or did you bring it up?

A. She brought it up.

Q. And part of this session was with her

and her mother and part of it was her alone?

A. Yes.

Q. Which part did she bring it up during?

A. When she was alone.

Q. Okay. It says updated on being wanted to be called Gabriel, the name her mother wanted but got no support. Tell me what that's about.

A. My recollection is that -- you know what? I'm actually -- as I think about it, I don't -- I don't know what the "got no support" is about. I've forgotten. I'm sorry.

Q. Okay. And how about the wanting to be called Gabriel part? Gabriel, I assume, is a man's name or is it both?

A. Yeah. I think it's -- Gabriel could be a man's name. It could be just a more -- could be like a -- a kind of almost neutral name.

Q. Who's Gabe?

A. What do you mean?

Q. It says Gabe was very on edge about --

A. Bella's -- I'm using the word -- Bella is calling herself Gabriel in the session and probably also called herself Gabe.

Q. Okay. Now, was there a discussion at

this, the very first time about gender?

A. I don't recall.

Q. Okay. Do you remember anything about this session or around this time? I don't want to confine you to this particular day, but when you first started to learn that this was an issue.

A. I mean, it -- it kind of -- it kind of marks a pretty significant change in the conversations because gender starts to become a big -- gender and identity becomes a big part of our conversations.

Q. Did you feel that there was -- and, again, I'm not confining you to this visit. But early on when this started to become an issue, did you feel that her depression and anxiety was in any way related to the gender issue?

A. Did I feel -- I probably had some thoughts that maybe some of the reasons that treatment was not going anywhere is because we had not really been talking about an underlying issue and now we were talking about it.

Q. I was thinking and suggesting something different.

Did you feel that in any way her

depression and anxiety was causing her gender issues?

A. No.

Q. Is there a difference between gender dysphoria and -- let's see what I'm looking for -- gender nonconformity?

A. I don't know. It's possible that gender nonconformity could be part of gender dysphoria.

Q. Okay. I'm not asking you to guess. If you don't know, that's okay.

Have you heard the term "gender nonconformity" used in the past?

A. Yes.

Q. Have you heard the term "gender dysphoria" used in the past?

A. Yes.

Q. Did you have an understanding as to what was meant by "gender dysphoria"?

A. Yes.

Q. Tell me what -- what you felt during the course of time that you were treating Fox what you felt was meant by "gender dysphoria."

A. It would -- it would be, you know, a

marked inconsistency between how somebody experiences themselves versus how they look in terms of their gender as well as how other people experience them.

Q. And did you have an understanding -- and if not, just, you know, feel free to say so -- as to what was meant by "gender nonconformity"?

A. I have an understanding of what I believe "gender nonconformity" means. I don't know if I understood exactly what Fox was referring to.

Q. I didn't -- what do you mean what Fox -- I didn't mention Fox.

A. Okay.

Q. I'm just asking --

A. I have an understanding of what "gender nonconformity" refers to.

Q. And what is your understanding?

A. My understanding is it's somebody that doesn't conform -- somebody that doesn't conform to typical binary genders in our society.

Q. Now, there were a couple of visits throughout 2018 through December. Could you review those notes and tell me what was going on

during that time, from the time when gender first became an issue in November of 2018 -- at the very end of November of 2018 until that last visit in December, which was December 29th of 2018.

A. It -- it becomes very much the center of our conversations.

Q. You're still listing her as Bella --

A. Yes.

Q. -- in terms of your client.

And at times you go Bella and then in parentheses Gabe, end parentheses. What was your understanding in that regard?

A. I think I was referring to Bella as Gabe in session and still referring to her -- or to them as Bella in the note.

Q. Now, what were the discussions that you had with her at the end of November and -- and December of 2018 as it related to gender?

A. We started talking about a binder and pronouns.

Q. Now, do you recall anything that Fox said to you during -- during that approximate period of time regarding gender?

A. I don't, anything -- I don't, anything

specific.

Q. Okay. Do you recall in general what her concerns were, what her questions were, what her thoughts were as it related to gender?

A. There was a -- there were a lot of conversations about how they had significant frustration with looking in the mirror and seeing breasts.

Q. Can we agree that at this early time you had not diagnosed her as being gender dysphoric?

A. Yes.

MR. KORNFELD: Bear with me for one second, please. I've got a quick call I'm getting, so just give me two minutes. I'm sorry.

MR. FIEDLER: Go ahead.

(A recess was taken from 11:47 a.m. to 11:50 a.m.)

Q. Now, on December 22nd your note says, talked about comfort with self and body. Binder had been ordered, and they will find a male style and Gabe would try it. Tell me about that.

A. That was a conversation where Fox was expressing how he was feeling with how he appeared and stuff. He was pushing very hard to get a

binder. We were starting to have a very real conversation about how Fox identified. And at the end of the session, mom said she would order a binder and Gabe would try wearing more male-style clothes.

Q. Did her mom seem supportive of her daughter?

A. As I recall, yes.

Q. Okay. Did her mom seem loving of her daughter?

A. I never thought that Clare didn't love her daughter.

Q. Okay. And then on the 29th where it says update and progress, it says still very ambiguous with her sexuality and appeared very comfortable for the first time in months. What does that mean? It seems to be --

A. It means that she -- she or he or they -- I can't remember if we were using "he" or "they" at that time. We were not using "she." They were happy with how they were -- they were looking. And, you know, there was -- there were two things that we were talking about. We were talking about gender identity -- excuse me -- and

then we were talking about sexuality. And my recollection is that Fox was very ambiguous about sexuality, not very ambiguous about the gender.

Q. Tell me what the difference is.

A. The difference is gender is, again, how we present to the world and others experience us; and "sexuality" refers to how we express our sexuality.

Q. And what was the ambiguity?

A. As I recall, the ambiguity was that Fox wasn't identifying as straight or gay or bisexual or pan or any other thing. My recollection is that Fox was identifying as male.

Q. Okay. Then we get -- then we get into January of 2019. And now we're in the -- we're about 12 months away from surgery, right?

A. Yes.

Q. When during the course of this year did you first diagnose Fox as being gender dysphoric?

A. I think, January of that year, when we were talking about names and pronouns --

Q. Well, you -- you can -- I mean, one of the treatments for gender -- let me ask it this way: Are you saying that you diagnosed the

patient as gender dysphoric in January of 2019?

A. I -- I don't think I ever actually formally used that diagnosis in any paperwork. I started thinking of them that way. There was a lot of -- all of the conversations after we kind of settled on pronouns over the course of this period of time was around discomfort with -- with breasts.

Q. When did that first become discussed?

A. Well, it started being discussed in December of 2018. And it was a regular theme.

Q. Now, somebody having -- would you agree -- would you agree, Doctor, that a patient complaining of discomfort with breasts does not make that patient gender dysphoric?

A. Yes.

Q. And there are treatments for -- for gender-nonconforming patients who are not gender dysphoric, that are uncomfortable with their breasts, including binding, right?

A. Yes.

Q. And so did you ever diagnose this patient as gender dysphoric?

A. I started thinking of them as gender

dysphoric. I don't believe that the diagnosis was ever formally changed to gender dysphoria.

Q. Well, whether you formally changed it or not, did you ever consider Fox to be gender dysphoric?

A. Yes.

Q. At any time -- excuse me. At any time before the top surgery?

A. Yes. I mean, around this time, I mean, she was talking about changing pronouns.

Q. Well --

A. We're talking about wearing male clothes. There starts to be conversations about getting upset if peers or staff didn't treat her as she wanted to be treated.

Q. Now, you would agree, would you not, that changing pronouns does not render a patient gender dysphoric? As a matter of fact, gender-nonconforming patients oftentimes change pronouns so that they feel better about their nonconformity, right?

A. Yes. It's --

Q. And would you -- and would you -- I'm sorry. Go ahead. I didn't want to --

A. No, it's okay.

Q. And would you also agree that a desire to wear -- for a woman to want to wear or a female adolescent to want to wear male clothes can be consistent with gender nonconformity and does not give rise to the diagnosis of dysmorphia -- dysphoria? I'm sorry. Dysphoria.

A. Yes. By itself.

Q. Okay. As a matter of fact, would you agree -- and you don't have to. But would you agree that there are gender patients that are gender-nonconforming who want to wear the opposite sex clothing, who want to change pronouns, who want to appear and be known as the opposite sex without being dysphoric?

A. I mean, the definition of "gender dysphoria," again, is a marked discomfort with how you appear to others versus how you want to appear. And then the features of it are all of the features that we're naming.

So if I was going to diagnose somebody with gender dysphoria and you have a marked discomfort with how they're presenting compared to how other people experience them and then they're

also wanting to wear the opposite sex clothes, to use opposite sex pronouns, to very tightly bind their breasts and become very upset when somebody does not refer to them as they want to be referred to, now we're like splitting hairs with is it this or is it that. By the diagnostic definition and the DSM, it can be understood as gender dysphoria.

Q. Well, actually the -- I'm going to read to you the definition of "gender dysphoria" in the WPATH standards. It says -- and I'm just going to ask you if you agree or disagree with it. It says, gender dysphoria --

MR. KORNFELD: Wait. I'm not sure what you mean by "if you agree or disagree." If you're reading it and that's what it say, that's what it says.

MR. FIEDLER: I'm just saying, if you adopt that definition as accurate.

Q. It says, gender dysphoria refers to discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth. Is that a definition that you accept?

A. It's pretty consistent with the DSM

definition.

Q. What, in your opinion, distinguishes gender nonconformity from gender dysphoria?

A. I think that it's largely the individual that makes that distinction.

Q. Okay. How do you define "binary"?

A. What do you mean by how do I define "binary"?

Q. What is meant by "binary"?

A. Either/or.

Q. Okay. Now, in your notes -- in your note for January 5th, do you mention anything about dysphoria?

MR. KORNFELD: I couldn't hear the question. Just read it back, please.

Q. In the notes in January of '19, do you mention anything about dysphoria?

MR. KORNFELD: You mean the actual word itself?

MR. FIEDLER: Yes, yes.

MR. KORNFELD: Okay.

A. No.

Q. Okay. Now, when you saw the patient on January 12th, what do your notes suggest in terms

of what was going on with gender?

MR. KORNFELD: 1/12 of '18?

MR. FIEDLER: '19.

MR. KORNFELD: '19. I'm sorry.

MR. FIEDLER: No problem.

A. I mean, we're talking about how other people experience them versus how they want to be experienced.

Q. And then we get into February of '19. Could you turn to the note for February 2nd, please?

A. Yes.

Q. Any reference there to gender?

A. Yes. We're talking about pronouns.

Q. Okay. And do you recall what the conversation was in that regard?

A. Wanting to be -- use male pronouns.

Q. Okay. And February 9th, could you turn to that visit, please?

A. Yes.

Q. Any references to a discussion about gender?

A. No.

Q. And during these sessions were you

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still focused on treating Patient's depression and anxiety?

A. Yes.

Q. The visit of February 16th of 2019, any reference to gender there?

A. Yes.

Q. And where is -- is that where it says then talked about introducing self to people as Rowan and the words to use to say it's he?

A. Yeah. As -- yes.

Q. And tell me about that, if you can recall.

A. We were just talking about Rowan wanting to be seen the way he wanted to be seen and kind of like how he could do that, how he could encourage people to see him how he wants to be seen. And we practiced it.

Q. Now February 23rd, turn to that visit, please, of 2019. Any reference to gender or discussion in that visit?

A. Yeah. We're still talking about dealing with people using the right pronouns.

Q. Okay. Anything other than -- you know, in these last couple of visits, anything other

than the pronouns?

MR. KORNFELD: Anything referenced, you're saying, in the notes?

MR. FIEDLER: Correct.

A. Yeah. The notes are talking about pronouns.

Q. Do you recall anything in addition to that during these January and February of 2019 visits?

A. I recall that they were -- as long as people were identifying them how -- how he wanted to be identified, he was doing better. We still had the issue if it didn't happen the way he wanted it to.

Q. What do you mean when you say if it didn't happen the way he want --

A. If somebody misgendered them or used their birth name.

Q. Okay. And did Fox appear to you to be contented by being identified as a male?

A. Certainly more contented than they had been in the months leading up to this.

Q. Okay. Did -- I'm sorry. Did Fox's anxiety and depression appear to change at all?

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A. She was presenting -- he was presenting as less anxious and depressed at this time.

Q. So was Fox wearing a binder at this point?

A. Yes.

Q. Okay. So it sounds to me -- correct me if I'm wrong -- that with respect to the gender issue, wearing the binder and being recognized with -- as a male with male -- using male pronouns seemed to be helping.

A. Yes.

Q. And was that the case throughout March of 2019 as well?

A. No.

Q. Okay. Let's just -- before we get to March, then can we agree that -- I think when you first started treating the patient, gender was not an issue --

A. Yes.

Q. -- right?

And then at some time gender became an issue, but -- but you didn't diagnose the patient as being dysphoric?

MR. KORNFELD: That's not what he

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testified to.

MR. FIEDLER: Okay. So let's -- let's -- let me apologize for that.

Q. Can we agree then that up until March you did not consider Fox to be gender dysphoric?

A. No. Because I started thinking that in January when we started talking about all of those kind of ancillary things to gender dysphoria, where there was clearly marked distress when somebody misgendered. And we were talking about pronouns and binding her breasts or his breasts and being seen the way he wanted to be seen.

Q. Well, all of that pathology can take place without a patient being dysphoric, right?

A. Sure.

Q. Okay. So when you say you started thinking about it, it doesn't mean you diagnosed it, correct?

A. Well, I mean, I -- I know that the diagnosis never makes it to the record because I know that the diagnoses where I work is largely used for billing purposes.

Q. I --

A. It's certainly on my mind.

Q. Okay. Let's talk about -- let's forget about the record for a second. I just want to establish what your thinking was.

A. Right.

Q. And my question is, is it fair to state that as of March of 2019 -- in other words, prior to March of 2019, while you may have been thinking about the issue of dysphoria, while it may have been in your differential diagnosis, so to speak, it was not definitively diagnosed by you up to March of 2019; is that a fair statement?

A. Yes.

Q. Okay. Now, what changed in March?

A. We started having conversations about top surgery because, as I recall, he had been binding his breasts so tightly he was starting to bruise and was having trouble breathing.

Q. And did you feel that the trouble breathing was because of the binder?

A. Yes.

Q. Okay. Well, let's go through the notes, if you will. 3/9/2019, any reference to gender in that note?

A. Yes. We talked about being triggered

when people use the birth name.

Q. But can we agree that the stuff you were just talking about in your last answer that you deemed to be a change, this -- it hadn't happened yet, not this early in March?

A. It happened the next week.

Q. Okay. So let's go to that then, if you will.

On March 16th of 2019, you met with Fox and his mom, right -- and her mom -- his mom?

A. Yes.

Q. Okay. And that's when the first -- the first mention of top surgery, correct?

A. As is written in my note, yes.

Q. Okay. So we can agree that March 16, 2019, is the first time a note mentions top surgery?

A. Yes.

Q. And I would assume if top surgery is starting to be discussed, that's something for you as the psychologist that would be a very -- of great significance.

A. That's -- that's why it's in the note, yes.

Q. Okay. And it doesn't appear in any prior notes, so my assumption is -- correct me if I'm wrong -- that this was the first time it was even discussed.

A. I don't remember exactly. This was certainly the first time it was discussed extensively.

Q. But can we agree then that -- that before March 16th you don't have a note of it and you don't have a recollection of it?

A. Right now --

Q. Can we agree with that?

A. I don't know if I'm going to remember something -- yeah, it's not in my notes.

Q. All I'm asking you for right now is what your recollection is as we're talking. And is it fair to say --

A. Yes, as we're talking right now, it's not in my notes until March 16th. And I don't recall any significant conversations about it until March 16th.

Q. Who brought it up?

A. Fox did -- or Rowan did at that time.

Q. Do you recall that conversation?

A. More or less.

Q. Tell me what the sum and substance of that conversation was.

A. As I recall, Rowan had started looking into top surgery and he was talking about it.

Q. Okay. Do you recall in any greater detail other than what you've already told me about --

A. No.

Q. -- the conversation about top surgery?

A. No.

Q. And then later on it says, worked on the connection to the Gay Center. Tell me about that. What does that mean?

A. I sent an e-mail to Peter Keres at the Gay Center that mom would be reaching out.

Q. And did she?

A. She never did, no.

Q. And why did do you think that she would?

A. She said that she would reach out in the session, as I recall.

Q. Whose suggestion was that?

A. It was my suggestion that they reach

out to the Gay Center.

Q. And upon what did you base that suggestion?

A. Because now we were talking about a more permanent change.

Q. And who or what at the Gay Center did you feel could be helpful or -- or useful in that regard?

A. The Gay Center is a counseling center and a support center and a community center for the LBGTQ community, including people dealing with trans issues. And I believed that that was something that they should pursue since we were now dealing with a more significant thing.

Q. Okay. And then underneath it says, current danger potential, none reported or observed. That would include any suicidal attempts, ideation, discussion, anything like that, right?

A. Yes. I mean, my notes -- my notes, again, they're -- they're my notes for me. They're not great, as I said earlier. It was not uncommon when things were not going well that Rowan at the time would say things like I'm going

to kill myself.

Q. And on those occasions you wouldn't write that down or put it in your note?

A. You know, my notes aren't great. I've -- now, this is -- we -- we talked about, you know, I tend to write things down that are new. At that point that's not new.

Q. Is another -- is another explanation for not writing it down the fact that, you know, you were fairly confident that she didn't mean that she was going to actually do it?

A. Well, there was no plan, at least none that was communicated to me.

Q. Okay. No plan, and you mentioned something other than a plan before. You used the word "plan" and something else in terms of it being real.

A. Well, I mean, access to lethality, not being supervised.

Q. Got it. Okay.

A. I surmised -- he was not talking about this in other contexts except maybe at home. If he had talked about this in school, he would have been sent to the emergency room.

Q. Okay. He never talked -- Fox never talked about it in school, right?

A. To my knowledge, yes.

Q. And to your knowledge did Fox ever talk about at home?

A. It was referenced. But I wasn't at his house, so I wouldn't be able to say to my knowledge he did.

Q. Okay. But I think we've established up to the time of the surgery there was never anything that lead you to believe that there was a plan or means of access --

A. Correct.

Q. -- correct?

Okay. Is that -- in lay terms is that a way of saying that while it was, as you said before, something that you -- was on your mind, you never -- that you took seriously? In your opinion it was never anything that was a real threat?

A. In my opinion it seemed that way.

Q. Okay. Now, March 16 was the Gay Center.

Let's go to March 23rd, if you will.

A. Okay.

Q. Take a look at that note, those notes and tell me if that refreshes your recollection as to what was discussed during that session.

(The witness perused the document.)

A. Yes. I mean, that's -- it does recall -- I do recall the session.

Q. Tell me about it.

A. I mean, where mom hadn't contacted the Gay Center, he was frustrated about that. We talked about how he could contact the Gay Center himself, you know, and the ongoing anxiety that he was experience -- you know, the ongoing anxiety he was having of someone experiencing him as different than how he wanted to be experienced.

Q. Okay. March 30th, the visit of March 30th, was there discussion about gender at that point?

A. Yes.

Q. Tell me about that.

A. It does say that mom did e-mail the Gay Center, which I did not recall earlier. And we talked about -- we talked about talking to peers.

KENNETH EINHORN, PhD

Q. I -- I may have asked this already, but I don't have a note and -- did there ever come a time when you actually diagnosed -- and I'm not talking about for billing purposes. Did there come a time when dysphoria rose to the occasion of a diagnosis in this case as opposed to just being included in the differential?

A. Yes. I mean, it's around -- it's -- it's March 16th. It's right around this time that I'm thinking in my head that this is somebody who is -- is experiencing gender dysphoria. They're getting very upset when somebody misgenders them or uses their -- some people, including Rowan, were referring to it at the time, their dead name, and, you know, wanting to use the -- the male pronouns, wanting to be -- wanting other people to experience them that way.

Q. Okay. March 30, we were going to start -- we were going to talk about that.

MR. KORNFELD: You did already.

MR. FIEDLER: We did already. Okay.

Q. April 6th, any reference there to gender?

A. More we're frustrated they hadn't heard

from the Gay Center. The science class issues were a lot about the science teacher using the dead name and using the wrong pronouns.

Q. And, again, current danger potential, none ordered or observed, right?

A. Yeah. I mean -- I mean, I'm sorry that I -- it's unfortunate that I didn't note whether or not those statements were made because I can't remember.

Q. Okay. But if you -- certainly if you were impressed that there was any current danger potential, this is where you would have noted it, right?

A. Yes.

Q. Okay. And then March 14th, could you tell me based upon what you see in your notes if that refreshes your recollection as --

MR. KORNFELD: April 14th.

MR. FIEDLER: April 14th.

A. April 13th?

Q. Yeah, if that refreshes your recollection as to what transpired at that time, April 13th.

A. Yeah. We were talking about barriers

to being able to have top surgery, to change names, you know, more formally.

Q. And what were those barriers?

A. There were financial barriers that were discussed. There were some dynamics where I don't know if everyone was a hundred percent in support.

Q. Well, when you say you don't know if everyone was a hundred percent in support as of April 13th, would that include Fox?

A. No.

Q. Would that include Clare?

A. Yes.

Q. Would that include you?

A. I'm -- I don't think I was ever in support or not in support. I was really trying to support Rowan dealing with their everyday life.

Q. We'll get back to that later.

Anything else you remember about this visit based on the notes?

A. I mean, I did think that some of the perseverating that was going on in the session could be related to the spectrum diagnosis.

Q. How did you feel up to this point in time Fox was doing with respect to her anxiety and

depression?

A. I think -- I think it was very variable. I think there were times when -- when they were feeling okay and there were times where they were very anxious and depressed, a lot of it -- a lot of it around being seen the way they want to be seen.

Q. Do you know when Fox was first diagnosed with depression and anxiety?

A. No, I did not.

Q. Did you ever make any inquiry in that regard?

A. I did not.

Q. March 27th, turn to that visit, please.

MR. KORNFELD: I think we're in April.

MR. FIEDLER: I'm sorry. April -- you don't think; you know.

Q. April 27th, can you turn to that visit, please?

A. Yes.

Q. Do those notes refresh your recollection as to the discussion on that visit?

A. Yes.

Q. Tell me about it.

KENNETH EINHORN, PhD

A. We were having conversations about school and conversations about becoming self-reliant versus relying on other people.

Q. What does a CSE mean?

A. CSE refers to the Committee on Special Education.

Q. So nothing -- doesn't appear that there was much discussion here about gender, correct?

A. I don't want to say there wasn't any. It wasn't the primary focus, and now gender is coming up all the time, so --

Q. How about May 4th --

MR. KORNFELD: Before you ask about May 4th, take a break for a couple of minutes?

MR. FIELDER: Sure.

MR. KORNFELD: Okay. Thanks.

MR. FIEDLER: You got it.

(A recess was taken from 12:25 p.m. to 12:27 p.m.)

Q. Okay. May 4th, any mention in there about gender?

A. Yeah.

Q. Tell me about -- what does --

A. We're just talking about -- we're just talking about the -- you know, being misgendered.

KENNETH EINHORN, PhD

Q. Okay. Does this --

A. You know, and it's like -- it's -- unfortunately I don't have it in my notes. And any notes, again, are written for me. I don't have specifically what it was, but the pronouns, the -- you know, someone using their dead name, which did happen a lot that spring with the science teacher, you know, how he was appearing to other people.

There's a note that the -- the karate instructor was very supportive, and I think -- I think that was noted because there were some less supportive conversations with other people. And so, you know, I think that was a good thing for -- for them to experience that at that time.

Q. Okay. Now go to May 11th, please. And does reviewing your note refresh your recollection as to what was discussed then?

A. Still struggling with the name change. You know, school comes up.

Q. You write -- under any significant observations, you write the writer wonders. That's you, right?

A. Yep.

KENNETH EINHORN, PhD

Q. Writer wonders where things would be if Rowan's name was changed and he had information about transgender medical support --

A. Yeah.

Q. -- if he's not stagnant about that, would he be progressing in other areas too?

A. Yes.

Q. Tell me what you mean by that.

A. The reason why I wanted them to connect to the Gay Center or to someplace like that is because -- you know, I am very capable and have good outcomes, generally speaking, working with people with depression and anxiety and people on the spectrum disorder.

I don't work with, as we've already talked about, a ton of people who are transgendered. I'm not part of a treatment team. That way I don't have easy access to those kinds of people, and I was wondering if he had -- if he was involved in a program like that in addition to working with me on these other things related to the -- the social aspect of just living life, if he wouldn't have been doing better.

Q. Before this patient underwent top

surgery on December 16, 2019, did Fox or Clare ever get such support?

A. They went to the center -- a similar center, I guess, to the Gay Center in Albany. My understanding is they went a couple of times in person. I don't recall knowing why they didn't go more often.

Q. Do you feel that that accomplished or did not accomplish your query here about where things would be if they did do something like that to get transgender medical support, I assume, two -- two times --

A. It's a -- it's a tough question to answer because I don't know what my thought process was at the time.

Q. Well, you would agree that going to Albany twice would not accomplish what you were --

A. Yes.

Q. -- trying to accomplish, right?

A. Yes. And I'm -- I'm -- I know at some point they also connected with another group -- I don't know where it was -- where they were both going to some group support things. I don't recall how long that was going on for.

Q. Well, when you talk about where things would be if Rowan's name was changed and he had information about transgender medical support, based upon what you do know, before the surgery was done in December, were you ever satisfied that he had that support?

A. I had assumed at the time that they had met with the surgeon and that because I had been given his name by other clients of mine around this particular surgery that he would have been able to provide some of that support, so I think at that time I probably was.

Q. When you say "at that time," it's about at the time that the surgery was done?

A. When they -- when they started to have the conversations with the surgeon.

Q. Okay. But before that you did not have that same feeling, correct?

A. Correct.

Q. Okay. Why did assume that the patient was getting that transgender medical support from the surgeon?

A. Because it's -- because it's a medical office. It's -- you know, it's part of a medical

group. I guess I made an assumption that, you know, if this kind of surgery is being performed that there are other supports there and in place.

You know, I -- I'm a psychologist. I'm working out of a fee-for-service office. And my expertise is in treating adolescents with anxiety, depression as well as a number of other issues, including being on the spectrum. But I'm not connected to, you know, a -- a whole transgender team.

Q. Well, you referred the patient to Dr. Chin, didn't you?

A. I gave them their name. I gave them Dr. Chin's name. I didn't actually refer her -- refer --

Q. What's -- what's the difference between giving them Dr. Chin's name and referring them to Dr. Chin?

A. Because I referred them to the Gay Center when I contacted my friend and said, hey, these people should be calling you. That would be a referral. I'm just -- they said -- at one point I think the conversation was around not being able to find a surgeon, and I knew this

surgeon from other transgender clients. I simply gave them his contact information.

Q. Why did you gave them his contact information?

A. They were asking for a surgeon that did this kind of surgery.

Q. Okay. We'll get back to that in a minute.

When you say "transgender medical support," what do you mean by that?

A. I'm thinking of the whole -- the -- whatever it -- like I'm not -- I'm not --

MR. KORNFELD: Just what -- what is the support --

A. I would assume the support would be whatever would be needed by someone who's actively looking to transition so that they do so safely and get the outcome that they want to get.

MS. CANN: Mr. Reporter, excuse me. Could you read back that answer, please.

(The reporter read back the requested portion of the transcript.)

MR. FIEDLER: Give me a second.

Off the record.

KENNETH EINHORN, PhD

(A discussion was held off the record.)

Q. Now, what did you know about Dr. Chin when you gave Dr. Chin's name to Fox?

A. That he had performed the surgery for other people that I had worked with.

Q. Did you know anything else about him?

A. That's all I knew about him.

Q. Did you do any research to see anything else about him before you gave that name --

A. I did not.

Q. -- to the patient?

Well, if you had -- I'm going to ask you to assume that if you look up Dr. Chin on the physician profile for New York State, it says he's a hand surgeon. Would that have in any way -- if you read that, would that have in any way dissuaded you from giving them that name or perhaps done a little research before you gave them a name?

A. Yes. Probably.

Q. Did you ever discuss this case with Dr. Chin?

A. No.

Q. Did Dr. Chin, to your knowledge, ever

call you or make any attempts to call you -- and, again, only to your knowledge --

A. No.

Q. -- to discuss this patient?

A. No.

Q. Did you -- as tempted as I am, I think I'm going to wait to get through these notes. And then I'll get back to it. Actually, let's do this now before I forget.

Did you ever in any way, shape or form dissuade Fox or Clare from getting the surgery?

A. I did start talking -- I mean, we had conversations together about how it was permanent. Fox -- Fox did a lot of research on it. At one point they were even showing me -- he was even showing me how he wanted the surgery to be done. He had looked up different ways that top surgery is done.

You know, we did talk about it being a permanent change. You know, we did look at the -- the -- the -- you know, the outcomes of that surgery, that, you know, it's -- for most people who have that surgery they're satisfied with the outcome. It's a very impressive number. That's

not -- that's just because you can look it up on Google and see it. You know, we talked about all of that stuff.

Q. You --

A. It was also -- it was also -- go ahead. I'm sorry.

Q. No, no. I interrupted you. Go ahead.

A. I was just going to say it was also -- like, you know, this was something that Fox was very logical about, very engaged in the process, very interested. It was a sign at least up until this point in treatment -- and I start to see it in other places later on. But at this point it's the first time that, you know, like you can see what could happen with this person if they do have their emotions in check and they're able to regulate -- you know, kind of some evidence, maybe that the testing scores are underestimating who this person could be.

Q. Okay. You made the statement that this is something "that Fox was very logical about," correct?

A. Yes.

Q. You did say that, right?

A. I did.

MR. FIEDLER: Okay. Just give me a second. I've got to scan through all these records.

I guess it's not here.

Q. There came a time when the form of these records kind of changed, right?

A. Yes. It's the first --

MR. KORNFELD: Just answer the question.

THE WITNESS: I'm sorry.

A. Yes.

Q. And when was that?

A. Sometime in July, I think, of 2019.

Q. Okay. Let's go to that for a second just since you brought up this logical thing.

MR. KORNFELD: What date? I'm sorry.

MR. FIEDLER: Well, let me see. I'm going to find it in a second. It looks to me like the first one is -- I'm so bad with these mouses. Okay. July 20th.

Q. It looks like the first one of those forms is July 20th, right?

A. It would certainly be around that time,

yes. If I could find it myself.

Q. And --

MR. KORNFELD: Hold on a second there. Let's go to that note. Okay?

THE WITNESS: Okay.

Q. Now, once the records changed in January of 2019 to this form, under mental status there was a -- an entry that was made for judgement and insight. Do you see that?

A. Yeah.

Q. And I'm going to tell you that every single time right up to December when the surgery was done, you wrote in there judgement mildly impaired and never changed it. Okay? Do you see that?

A. Okay. Yeah.

Q. How do you now say that she was logical in her decision when -- let me finish --

A. Okay. Sorry.

Q. -- when at the same time you're of the position that her judgement was impaired even mildly?

A. So I was very specific in saying when it came to the conversation about top surgery at

this time she was very logical in her conversation, how she built her knowledge or how he built his knowledge about it, the conversations we had about that.

Q. So --

A. That does not encompass all of the other things that are going on. And then that's -- this is the first version of the note, and I probably needed to go back and make -- do a better job of making sure that was accurately reflected in each session, and I did not because it is a prepopulated answer. And so if you don't change it, it just populates with whatever you put in the last time you changed it.

Q. So we --

A. So obviously was not taking good notes.

Q. So we can agree that in your notes themselves, just confining this to the notes --

A. Yes.

Q. -- nowhere did you ever say that she was logical with respect to her discussions as they related to top surgery, correct?

A. Yes, that's correct.

Q. And can we also agree that in every one

of the notes up until the time of the surgery under mental status you write that her judgement is mildly impaired? We can agree on that as well, correct?

MR. KORNFELD: We've already -- we've been through that, Duane, already. He already answered.

MR. FIEDLER: Well, I'm allowed to ask things twice. You know what the stips are, but I'll accommodate you.

Q. And nowhere in those notes did you indicate that her judgement was mildly impaired about everything except for this issue of top surgery, did you?

A. Correct.

Q. But it's your position now -- correct me if I'm wrong. I just want to understand you correctly -- that as it related to top surgery, you felt that she was -- that she had excellent judgement and was very logical, but it was with respect to everything else that judgement was mildly impaired. Is that --

A. I don't want to characterize everything else. There are aspects of these notes as I went

through them that very clearly indicate that there were -- that there are moments where she is doing better and her judgement is much better than at other times. And, again, it's my mistake that I did not look at that.

Q. Well, you would agree that having top surgery is irreversible, correct?

A. Absolutely.

Q. And you would agree that having a top surgery on a 16-year-old girl is something that is a drastic, drastic way to approach gender nonconformity or gender dysphoria, right?

MR. KORNFELD: I'm going to object to the form of the question.

MR. FIEDLER: Because I used the word "drastic"?

MR. KORNFELD: Well, you used it multiple times actually.

MR. FIEDLER: Okay. I'm sorry. I was just --

MR. KORNFELD: You got a little excited there.

MR. FIEDLER: No, no. I'm not excited.

Q. Would you agree that for a female to

remove her breasts and do top surgery is a drastic remedy addressing gender nonconformity or gender dysphoria?

A. I don't know if I would use the word "drastic." I would call it significant and permanent.

Q. And in that it is significant and -- by the way, if you wouldn't note it as being drastic, it would -- do you think it was drastic to the patient?

A. I -- I -- I've -- I don't know how individuals feel about lots of things. I -- I would never -- never say that I understand what somebody else is thinking or feeling or experiencing, except I can certainly talk about what they do because you can see it. And I'm very good at that.

But my experience in my practice is that people experience the world so vastly different, it's amazing sometimes we can all get in an elevator together and agree that we're going up.

Q. What is your excuse, if any, for not doing your notes accurately? As you said, they

were not accurate.

A. My excuse is that it was a prepopulated note and I didn't look at that part of the note because it will allow you to save the note and sign the note without looking at those things. And it's -- it's not a great excuse, but it's the answer.

Q. Would you -- would your -- did you ever consider the diagnosis of delusion in her case?

A. No.

Q. Would you agree that inexperienced clinicians may mistake indications of gender dysphoria for delusions?

MR. KORNFELD: I'm sorry. The question is -- could other practitioners --

Q. Would you agree with the following -- would you agree or disagree with the following statement: Inexperienced clinicians may mistake indications of gender dysphoria for delusions?

A. I don't know if I want to go into what inexperienced clinicians would -- would make that mistake or not.

Q. So you can't agree or disagree?

A. Yeah.

KENNETH EINHORN, PhD

Q. Would you agree or disagree that inexperienced clinicians may mistake indications for gender nonconformity with gender dysphoria?

A. I'm still having a hard time understanding the difference between the two and how gender nonconformity doesn't fall into gender dysmorphia.

Q. Did you consider yourself an experienced or inexperienced clinician as it related to the diagnosis and treatment of gender dysphoria?

A. I don't have a lot of experience. I have more than no experience.

Q. And did you consider yourself an experienced or inexperienced clinician as it related to the diagnosis and treatment of gender nonconformity?

A. I would say the same answer.

Q. Okay. Did you -- during the -- during any time up to the time the patient had surgery, did you ever consider referring this patient to a -- a practitioner with greater experience than yourself?

A. I did.

KENNETH EINHORN, PhD

Q. And tell us about that, please.

A. I landed on -- as I mentioned at the top, my experience of Fox was that building trust was a challenging and time-consuming process. And in my opinion the relationship was trust-worthy right up until the end, and I had real concerns about how long it would take or if it would even happen that trust would be built with somebody else.

And I -- I -- I'm -- I'm a big believer in people feeling safe to be themselves. And if you create that for somebody who doesn't always feel safe about being themselves, you cannot assume that that's not nothing to that person even if you think it's -- like as in a case like this where I'm obviously working throughout treatment to try and help this individual consistently regulate themselves and I'm not having the kind of success I would want doing that, that just because I'm not having that success, that creating that space of trust where that person can be themselves is itself a significant accomplishment for that person.

Q. Any reason for not referring her to a

clinician more experienced in gender dysphoria other than the trust issue that you just spoke about?

A. That was the -- you asked the question. The answer was I didn't do the referral because of the trust issue.

Q. Okay. Did -- did Clare or Fox ever refuse any referral by you?

A. Not to my recollection.

MR. FIEDLER: I guess, let's pick up from July. Where's that July visit?

Q. Okay. July 20th of 2019, I'm going to pick up from there, if you will.

A. Okay.

Q. Which of the notes are not -- you know, like, in other words, if it wasn't just going to be autopopulated, where would your -- where would something new or different appear? Would that be under the assessment, I would assume?

A. Just give me one second --

Q. Sure.

A. -- because that's part of what moved over time.

Some of the assessment and plan looks

like that's where the --

Q. Okay. So I just have a couple of questions that I want to ask you about what you mean by certain things.

January 20th, it says --

A. You mean July 20th?

Q. Yeah, July -- July 20th. Thank you. I appreciate that.

It says irritability -- irritable, abnormal swings. What did you mean by that?

A. I don't see it.

Q. It says, mood and affect, colon, irritable, abnormal swings?

A. That's something else that's going to populate itself.

MR. KORNFELD: You're asking about assessment. That's -- that's above it.

MR. FIEDLER: Right above it, yeah.

Q. What does that mean?

A. Irritable, abnormal mood swings?

Q. Yeah.

A. I mean --

MR. KORNFELD: It's your personality, Duane.

KENNETH EINHORN, PhD

MR. FIEDLER: That's for sure.

A. Well, the abnormal mood swings means that I experienced their moods swing very quickly in session or in some way that most of my experience working with people with -- the mood would not change like that. I mean, irritable is irritable. I don't want to define a word by a word. It just means that you're --

Q. And does this note refresh your recollection at all as to whether there was any conversation about gender or surgery in particular?

A. It does not. Though, again, now we're in the summer. We're not dealing with peers as much.

Q. And the diagnosis continues to be anxiety and body dysmorphia. Is that -- I assume from your previous testimony that that's more for insurance purposes.

A. Yeah. That's -- yes.

Q. Okay. Now, one thing that seems to repeat itself is that Bella's not doing well in school, lots of missed school and problems at school. Could you tell me what your recollection

KENNETH EINHORN, PhD

is in that regard.

A. My recollection is that she had a hard time meeting the academic expectations and she would have a lot of anxiety if -- you know, when people started talking about did you do this, did you do that kind of stuff. And then there was at certain points issues with staff members. The one that stands out for me, again, is that science teacher from the -- the spring of -- I guess it would be the spring of 2019.

Q. Then it says -- in this July 27th note, it says under assessment, slash, plan, and I quote: "Then discussed where mom is at with his top surgery and how learning to calm might help create an argument for her to have the surgery sooner." Tell me what you meant by that.

A. What I mean is that I -- I think this is right before, right after they went to Albany. Mom is not a hundred percent on board, I'm guessing. And the kind of typical response that Rowan at the time was using was his typical response of getting very angry, very demonstrative, yelling, screaming, maybe saying something to the effect of I'm going to kill

myself if I don't get the surgery.

I don't know if that happened or not, but I could certainly imagine it did. And that if we could learn to be calm, again, going back to that goal of emotional regulation, it becomes possible to have a much better conversation in this case with mom.

Q. But why did you write getting the surgery sooner?

A. Because they wanted -- they were expressing a desire to have the surgery as soon as possible.

Q. Who -- who's "they"?

A. Rowan, Fox.

Q. "They" is more than one.

A. I think at that time they were using they/them as their pronouns.

Q. Okay. I want to ask you a couple of questions about his mom, Clare.

A. Okay.

Q. Did she appear before the surgery to agree to have it done?

A. My --

MR. KORNFELD: I'm sorry. Did she -- I

couldn't hear. I'm sorry.

Q. Did -- did -- tell me about what your understanding was about her mom's agreement, acquiescence, consent, however you want to put it for her daughter to have the surgery.

A. My experience was that she was always a little bit apprehensive but that by the time they had -- they were getting ready to meet with the surgeon, she had decided to support Rowan in getting the procedure.

Q. Did Clare ever express to you that her concern or reluctance was in any way related to wanting to treat her anxiety, depression and other issues before resorting to a --

A. I don't recall that --

Q. -- remedy like this?

A. Yeah. I don't recall her ever saying it like that, no.

Q. Do you have a recollection of -- are you able to recall her not expressing that concern?

A. I don't want to say that she never expressed it because I'm just not remembering it.

Q. Okay.

KENNETH EINHORN, PhD

MR. KORNFELD: This might be a good time for a break, Duane. It's a little bit after 1:00.

MR. FIEDLER: Okay.

MR. KORNFELD: 20 minutes?

MR. FIEDLER: Tell me how much time you want.

MR. KORNFELD: 20 minutes okay?

MS. CANN: How about we come back at 1:30?

MR. KORNFELD: Okay.

MR. FIEDLER: Okay.

THE REPORTER: Ms. Cann, do you know whether or not you're going to be ordering a copy of this transcript?

MS. CANN: Yes, please. And could I get a mini as well?

THE REPORTER: Of course.

(A recess was taken from 1:04 p.m. to 1:34 p.m.)

Q. Okay. So we discussed referral afterwards, and I think you may have omitted something when --

A. I did. I did -- I did speak to mom at the very beginning of treatment a few times about

referring -- about meeting with a psychiatrist, that she was not willing to do. And then I did refer them to the Gay Center.

And then later in treatment after the top surgery, I did make a -- a real referral for Fox to speak to a -- a psychiatrist that actually was taken by a nurse practitioner, a very good one. And like I said, he did try medicine from a couple of days.

Q. Okay. Let's get to the August 3rd note, if you will. And under assessment and plan could you read that. And the treatment plan, I just have a couple of questions. It says, led top the frame Rowan uses versus the frame of power. That is always the case when it comes to one's own behaviors. Tell me what that means.

A. I think we were -- we were talking about the difference between Rowan relying on other people versus taking the power and kind of doing things for himself and kind of owning his behaviors as well as kind of making things happen for himself.

Q. Okay. And then it says, he also does not want to talk about mom's struggle with his

desire to transition, handicapping his ability to get the support he needs to transition. Tell me about that, please.

A. That probably directly refers to me trying to bring that topic up in session and Rowan making the decision not to talk about it.

Q. And what was your assessment or understanding of why that was going on?

A. Because he was angry or upset about -- "angry" is probably me making a presumption. He was somehow upset about it and didn't want to talk about it.

Q. And then on the bottom it says, anticipated timeframe to call completion 12 months. What does that mean?

A. It's -- again, it's a prepopulated thing that's directly for insurance companies.

Q. Okay. That doesn't --

A. In the notes they want --

Q. Is that in any way related to the time of the top surgery?

A. No.

Q. Then we're up to 8 -- I think we're up to 8/17 now.

A. Yeah.

Q. And I had a couple of questions, I think, about that.

A. Okay.

Q. Also processed ongoing frustration with mom and his desire to top surgery. What is that about?

A. I mean, there were other things that Rowan and Clare didn't get along with. I believe it's referring to things like mom has to work. She can't be around all the time. He was frustrated about that. And then I know that he's -- at this particular point in time that his mom is not a hundred percent on board with top surgery.

Q. And did you ever discuss with -- and this is up until the time of surgery I'm referring to.

A. Okay.

Q. Did you ever discuss with Rowan why his mom was reluctant in any way?

A. We did talk about it being permanent and stuff. I really at this point wanted him to talk to mom about this. I didn't want to do that

work for him, if that makes sense.

Q. Did you ever speak to the mom about what her reasons were for having any reluctance or hesitation?

A. She was worried about it being permanent. I mean, I don't have a child who has transitioned. But I would imagine if I did it would be a lot it take in, and I think it was a lot to take in.

Q. Do you have any children?

A. I have --

MR. KORNFELD: No. It's not relevant.

Q. I forget what the answer was.

Did you ever discuss it with Clare, the basis of any reluctance she may have it?

A. Again, I think she was concerned about the permanence. She was also having a hard time just accepting that this is who her kid was.

Q. Do you remember that?

A. Yes.

Q. Did she ever say to you in words or substance that she had no problem accepting him for who he was but just wanted to make sure with all these other issues going on, like --

KENNETH EINHORN, PhD

A. No she never said --

Q. -- depression, anxiety and the -- and the other problems, did she ever say that she thought maybe we should address those first?

A. No.

Q. Do you remember one way or the other?

A. I never remembered her talking to me like that.

Q. Okay. Do you ever remember her not talking to you like that?

A. What do you mean?

Q. Can you say from your memory that she never, ever expressed a concern for dealing with these other issues before resorting to surgery?

A. She expressed a concern about the other issues many times. She never put it in the context of before surgery.

Q. Okay. And the 31st of August you write continue to struggle with body dysmorphia, worked on a letter to mom with plans to send it at least a couple of times. Talk to me about what you recall in that regard, please.

A. He was working on writing a letter to his mom to talk about his desire for other reasons

for having top surgery.

Q. And did you complete that letter?

A. I don't recall.

Q. Did -- do you recall ever seeing such a letter?

A. I do not recall.

Q. And then you saw him again December 7th, and in that note under assessment and plan --

MR. KORNFELD: Hold on. Hold on. You went from August 31st. The next --

MR. FIEDLER: September 7th.

MR. KORNFELD: September. Okay.

Q. In that assessment and plan, you say problem remains how paralyzing his anxiety is and the lack of ownership in his language. What did that mean?

A. It's -- it's going along the same theme of like the struggle that he had acknowledging that it was his anxiety and not other people giving it to him.

Q. And then a little lower down it says, decision to not go to school a mixed bag. If top surgery was done, likely would have chosen to go.

The way he looks is driving much of his anxiety per his own report. Put to tears about it in session. Talk to me about it, please. What does that mean?

A. They decided to not return to the program he was in the previous school year. This was his experience, that he would have wanted to go if he was happier with how he was going to present to other people, including having had the top surgery. I'm not a hundred percent sure that's the only reason he didn't return to school.

Q. Could you be a little more explanatory about that.

A. I could be wrong. It was a while ago. But if memory serves, this was the first school year where New York State had mandated vaccines. I'm pretty sure that Rowan was not vaccinated.

Q. And visit of 9/14 is next. It says -- in the assessment and plan, it says Rowan will find himself more supported by mom when he shows by his actions ownership of his gender. What does that mean? What did you mean by that?

A. Exact same thing that I'm talking about in the previous note about ownership. It's not --

I recall there being a lot of struggle with this being not his mom's problem, that he is identifying in a different gender than he -- than he typically has experienced, that it's not his mom's problem. It's his problem. And he needs to work with mom so that she understands how he sees it and not overreact, get mad and blame her for the problem.

Q. Okay. I'm going to skip over the 21st because that's all the same, and now we're on the 28th.

A. Okay.

Q. And it says, moving forward with a medical consult on top surgery and planning to attend a support group for trans teens Wednesday. Could you please tell me what you recall about that.

A. I -- I certainly recall that this was probably -- at this point they had decided to move forward with the medication -- with the medical consult. I do recall, as I mentioned, there was the Albany center. And then there was another center. I just don't recall where it was, but I guess that would be another thing that I had -- I

strongly encouraged Rowan to attend these support groups, to get involved in the community for all the reasons that I've already said.

Q. On October 12th it says, prepared for Dr. Chin and talked about some of the trauma around the Avenue Q production. What do -- what do you mean when you said "prepared for Dr. Chin"?

A. The kinds of things that, you know, he might want to ask, that kind of stuff.

Q. And it says, chatted with mom about her struggle letting go of the birth name. Talk to me about that. What do you recall in that regard?

A. Just the same thing, that mom was having a hard time like -- I think mom was having a hard time with the change that her kid wanted to make.

Q. In the note of 10/26, it says caught up on top surgery, liked the surgeon, waiting to hear back from insurance company. Tell me what you recall in that regard.

A. That he talked to me about how the meeting went and obviously they -- the insurance company -- the insurance was going to need to cover the surgery for it to happen.

KENNETH EINHORN, PhD

Q. November 2nd, it says processed pre-op for top surgery and questions that should be asked. Could you tell me what you recall in that regard.

A. Just that we talked about what pre-op was going to be like and that he should ask questions about the -- about the pre-op. You should just hear what they have to say and leave.

Q. Do you recall what any of the questions were that were discussed?

A. I don't. I'm sorry.

Q. And then it says, then talked about how certain he is and what to do about changes to sexuality, which are more common than changes about sexual identity. Tell me what that encompassed, what you remember about that.

A. Well, first, I should have said gender identity, not sexual identity in the note. Sexuality changes, there's lots of research about that in the literature. There's a lot of research and literature that gender identity does not change nearly as much in our lifetime.

Q. But do you remember what you told them in that regard on that date?

KENNETH EINHORN, PhD

A. I'm sure we were talking about exactly those things.

Q. Could you be any more specific about what was said?

A. I can't. I'm sorry. It was a long time ago.

Q. What in your routine, custom and practice would you have said?

A. We would be talking, you know, about the permanency of this, the surgery. He was very -- very -- like at the time very ready for it to happen. And at the same time we were also talking about sexuality and, you know, that that is not for many people as determined.

Q. Then on November 9th you say here, talked about the school program in Bethel and then got into the challenges of top surgery, worries over having a period, does not due to low female sex hormones and wonders about testosterone levels. Tell me what your conversation was in that regard.

A. Well, that's the first time that I had heard of the program that Clare had found for him in Bethel. He was being homeschooled this fall

and was missing the interaction with other people, and this was a program for kids who were homeschooled. It's a little bit like going to school for like a specialty, so to speak.

And we talked about, again, like, you know, there's a recovery from top surgery, it's permanent. And then he got into one of his other -- other anxieties about being biologically female, that he would have his period and has shared that he knew that he had low female hormones and was wondering about the testosterone levels.

Q. And what did you tell him?

A. I listened. I didn't say much, not about the hormone levels. That's not my area of expertise.

Q. That would be an endocrinologist, right?

A. Yes.

Q. November 16th, Rowan will find himself more supported by mom when he shows by his actions ownership of his gender. Finding a provider who does top surgery would do this. What does that mean?

KENNETH EINHORN, PhD

A. I'm wondering if that's computer-copied from something because it doesn't -- it doesn't match the rest of the note.

Q. Okay. So you can't make sense of it, in other words?

A. No.

Q. December 7th, processed the week and talked about a lot -- about his anger at the postponement of his surgery and that his father who he finds always less than supportive. Do you remember surgery being postponed?

A. I don't. Only, I did read this recently, and I don't recall why the surgery was postponed or anything like that.

Q. And the last visit you had with him before the surgery was December 14th, correct?

A. Yes.

Q. And up to this point, can we agree that you were still treating him for his anxiety, for his depression, for his self-esteem issues, for the issues that went on with his dead, custody and those problems?

A. Yes.

Q. And how did -- or how do you feel he

was responding with respect to his treatment for anxiety?

A. Again, it's the same thing I said earlier. He was better. But if something happened that was not expected or was not to his liking, he did not manage that experience very well.

Q. Yeah, but --

A. He was not -- I don't recall him presenting as especially depressed at this time, but anxiety was very much there.

Q. And it says in the assessment and plan, processed anxiety around the surgery and named the LTG of being able to roll with things a little -- a little as Rowan. Struggles with the humanity of others while demanding tolerance for himself. What -- what do you recall that meaning?

A. What note is that from?

Q. That's from December 14th, the last visit before his surgery.

MR. KORNFELD: Just read it again, what you're reading so we can locate it.

MR. FIEDLER: Sure. Under assessment and plan it says processed anxiety --

KENNETH EINHORN, PhD

MR. KORNFELD: I see it. I see it. The first sentence?

MR. FIEDLER: Yeah.

A. My recollection is he had a lot of anxiety about the post-op experience.

Q. Do you remember any more specifically what that discussion --

A. I don't.

Q. Okay. Now, he did have the surgery two days later on December 16th, correct?

A. Yes.

Q. Did you recommend the surgery?

A. I never recommended the surgery.

Q. Did you feel the surgery was indicated?

A. I -- I'm struggling with "indicated." The surgery is something that he wanted.

Q. Well --

A. You asked me if I would support the surgery, and I said I would support him. I don't think it was indicated.

Q. Why do you think the surgery was not indicated?

A. It's an elective surgery. It's a permanent surgery.

Q. Right. Are there any reasons for which you felt that this surgery that was performed on December 16th was not indicated other than what you've just said?

A. Not at this time.

Q. Okay. Did you ever communicate that you felt the surgery was not indicated for those reasons to Clare?

A. I don't recall.

Q. Did you ever communicate that you felt the surgery was not indicated for those reasons to Fox?

A. No.

Q. Did you ever communicate that you felt the surgery was not indicated for those reasons to Dr. Chin?

A. No. As I mentioned earlier, I have never spoken to Dr. Chin.

Q. Now, the very first time that gender dysphoria became an issue was in March, I believe, on March 16th. And now Fox is having surgery --

MR. KORNFELD: That wasn't the testimony.

MR. FIEDLER: That's what I heard.

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MR. KORNFELD: Testimony was back in November of -- November of 2018.

MR. FIEDLER: Well, let me see if I can rephrase it so I can accomplish the same thing.

Q. My recollection of the testimony is that the first time that you ever diagnosed the patient with gender dysphoria was March 16th, and the surgery was done almost nine months to the day later.

Did you feel that that was too soon? I know you felt it wasn't indicated, but do you think it was happening too quickly?

A. Well, I'm struggling to answer the question definitively because it was something at the time that he very badly wanted. I wanted to support him. I did write a letter in support of it. I don't know how long this was really an issue. It first came up in that November conversation in 2018. It became very clear it was an issue in March of 2019.

Q. But how do you not know how long this was going on? You were his therapist for years. Didn't you ever discuss it?

A. As I mentioned at the top, this is

somebody who takes a long time to build trust with. It was the -- that November 2018 conversation is the first time it comes up to my recollection -- to my recollection in therapy with me. It does not mean this is something that -- that Fox was struggling with much earlier than that. It just means it's the first time he trusted me enough to start talking about it.

Q. Do you feel like you did gain his trust at some point during the therapy?

A. I do.

Q. After gaining his trust, did you ever go back to the issue of when this first came up with him?

A. I -- I never did.

MR. KORNFELD: Just -- I'm sorry.

MS. CANN: Wait. What issue? I'm sorry.

MR. FIEDLER: Gender.

MS. CANN: Okay. Thank you.

Q. My question is, why when you did develop his trust, did gain Fox's trust, why did you never go back to the issue of when did these gender issues first arise for him, for Fox?

A. I don't recall.

MR. KORNFELD: Before the next question take a quick break. Thank you.

MR. FIEDLER: Sure.

(A recess was taken from 2:02 p.m. to 2:05 p.m.)

Q. So you had mentioned earlier that you're trying to support Fox because it's something that she wanted badly. I think I paraphrased that accurately. If not, you can correct me.

Why would you support someone to do something that you felt was not indicated?

A. So I think my understanding of the word "indicated" was that it was medically necessary, like you have cancer and you need to have your lungs operated on. I felt that this decision was well-thought out. They were very invested in it. I wanted to be supportive of them. They repeatedly talk about in sessions leading up to this wanting to be seen by others as the way -- as they see themselves.

Q. So let me see if I can delve into this --

MR. KORNFELD: I don't think he's

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finished with his answer.

MR. FIEDLER: Oh, I'm sorry.

MR. KORNFELD: Can we get the answer read back so we can see where he is in the answer, please.

(The reporter read back the requested portion of the transcript.)

A. And so I supported the decision for him to have top surgery for those reasons.

Q. Now, when we took a break -- and I don't want to know the sum and substance of your discussion with Counsel -- but did you discuss the issue of the definition of "medically indicated"?

A. No.

Q. Okay. What is your understanding of what -- of what -- when I said to you do you feel that the procedure was indicated, what do you think I meant by that?

A. I think you meant like -- like I said, like you have a medical issue. If you don't have this procedure, you're putting your life at risk.

Q. And what gave you that impression?

A. That was my impression. I'm not a medical doctor.

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Q. Why would you as a nonmedical doctor in any way think that being asked if something is indicated means is it life or death like cancer? Why would you think that?

MR. KORNFELD: He just kind of answered the question.

A. Because -- the answer to the question is because indicated means if you don't do this you're going to die. I have two bad knees. I -- I absolutely could have resolved at least one of them with a simple knee surgery that I don't want because I don't absolutely need it and I don't want the recovery.

Q. So it's your position in this case, as I understand you correctly -- and you feel free to correct me if I'm wrong -- but you want us to understand that when you hear the phrase "was something indicated," it means to you is it life or death?

MR. KORNFELD: Objection to the form of the question.

Q. Is that accurate?

MR. KORNFELD: Objection to the form of the question.

He's not asking you to believe anything. He's just --

Q. Forget -- forget about what I believe. Is it fair to state that your position in this case is that when you answered the question was the procedure indicated and you said in your opinion it was not indicated, that what you meant by that was it's not life or death? Is that what -- is that what you meant?

A. More or less, yes.

Q. Have you heard the term "indicated" used in reference to many procedures that have nothing to do with life or death?

A. I don't know.

Q. Let me ask you ask this, Doctor: Do you know who referred the patient to Dr. Chin?

A. No.

Q. Is it your position --

MS. CANN: What did you just say?

MR. FIEDLER: He said no.

MS. CANN: And you asked who referred to Dr. Chin?

MR. FIEDLER: Yeah.

MS. CANN: Wasn't there prior testimony

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that he gave the patient the phone number to Dr. Chin?

MR. FIEDLER: He's taking the position that that's not a referral.

MS. CANN: Okay. Thank you.

Q. Okay. Did you ever send a referral letter to Dr. Chin?

A. I sent a letter in support of surgery to Dr. Chin. I didn't send a referral letter.

Q. Okay. Where is that letter? I haven't seen it.

MR. KORNFELD: It's in Dr. Chin's chart. I have a -- in terms of the copy, I have a --

MR. FIEDLER: Okay. Could you -- I don't think I have that with me right now. Could you -- oh, maybe I do. Hold on. Let's take a look.

Julia, do I have that?

MS. LONDON: I see sent it. Mm-hmm.

MR. FIEDLER: Okay. So let me get it.

MS. LONDON: But I can resend it right now.

MR. FIEDLER: You know what? Why don't

you just post it?

MS. CANN: Yeah. Could you, please.

MR. FIEDLER: Yeah, just post it so I could see it.

MS. LONDON: Okay. Hang on. Just give me a minute. I have office notes and I have the Northern Westchester chart.

MR. FIEDLER: It's probably in the -- it's got to be in the office notes. Actually maybe I can find it too, Dr. Chin's office notes. It's only ten pages, so that shouldn't be too hard.

MS. LONDON: Do you have it as a PDF? Because when I do it as a dropbox link, I can't post it to the chat.

MR. FIEDLER: No. It's not in here. It's not in the records that Chin sent me, so that's probably why --

MS. LONDON: Can I -- can I send it to the reporter, and maybe he can post it in the chat?

MR. FIEDLER: Do you have the letter?

MS. LONDON: I have it in his office -- I have it in office notes.

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MR. FIEDLER: No, the letter's not in there.

MS. LONDON: I didn't think so.

MR. FIEDLER: So --

MS. LONDON: Is it in the Northern Westchester chart?

MR. FIEDLER: No, it wouldn't be in there. So could someone please e-mail that letter to the reporter so we can discuss that.

MR. KORNFELD: I'm looking for it.

MR. FIEDLER: Thank you.

MS. CANN: Yeah, I'm looking in the Caremount records. I don't see it.

MR. KORNFELD: He saw the patient at Caremount, so it would be in the Caremount records.

MS. CANN: Yeah, I don't see it, though.

MR. KORNFELD: Julia, do you have a copy of it?

MS. FIEDLER: I don't see that we have the Caremount records here. No, we don't.

MS. CANN: You don't have it?

MR. FIEDLER: I don't have the

Caremount records in front of me, no.

MS. CANN: Well, I just looked through them. I didn't see it.

MR. FIEDLER: Does this thing exist?

MR. KORNFELD: I've seen it, yeah. We've all --

MR. FIEDLER: Okay. Take your time. I'm sure if you've seen it you'll find it.

MR. KORNFELD: Let's just go off the record.

(A discussion was held off the record.)

(Ms. London shared a document on the screen.)

Q. We have the October 14, 2019, letter from Kenneth Einhorn PhD to to whom it may concern. First question is, why did you address it to whom it may concern?

A. I wrote it for Rowan to use as a letter of support.

Q. Did you know -- but did you know it was going to go to Dr. Chin?

A. I don't recall. I -- I probably assumed that. I don't know.

Q. Okay. It says, I have been working

with B. Rowan, Basile since June 23, 2017. At that time she was diagnosed with autism spectrum disorder. That's based upon the testing, correct?

A. Yes.

Q. "For the next 18 months we worked together on anxiety management strategies with moderate success." What do you mean by "moderate success?

A. It literally -- because she was participating in summer activities and she had had some success with school that she hadn't had previously.

Q. Then it says, "In November, 2018 B. Rowan shared that she felt she was transgendered and felt much more comfortable being identified as a male." What did you mean by that?

A. I meant what it said, I think.

Q. "That November, Rowan enjoyed a huge boost in his ability to manage his anxiety as evidence by his successful participation in Panas Players Production." That's the play, right?

A. Yes.

Q. "However, as the Fall semester

continued, many of his anxiety symptoms returned. He struggled with being misgendered by both peers and staff. In addition, he began reporting anxiety when he looked in the mirror and saw his breasts as he dressed." What do you think precipitated this change in the fall?

A. He was being -- he was having experiences of being misgendered. I had mentioned the science teacher. I believe that some of his peers had done so as well.

Q. "At this time, I have diagnosed him with. . ." And what do you mean by "at this time"?

A. Those were the diagnoses that were in the insurance record at the time I wrote the letter.

Q. At this time I have diagnosed him with social phobia unspecified. What does that mean?

A. It means that he was having anxiety in social situations, but it wasn't unspecified -- it was unspecified because it wasn't in all situations or a specific phobia.

Q. And then it says, "Body dysmorphic disorder." What does that mean?

A. That was the diagnosis that was in the chart. We've been talking about how this was really gender dysphoria, but I looked in the chart. That was the insurance -- those were the insurance diagnoses at the time.

Q. Okay. It says, "We are currently working on three therapeutic goals: developing an outcome focus, improving his emotional regulation skills, and eating healthy." That was it? Those were the only goals?

A. Those were the goals we were working on at the time I wrote the letter.

Q. "His ongoing body dysmorphia remains the primary barrier to treatment." What did you mean by that?

A. I meant that his struggle with how he was presenting to others, where he wanted to present as a male and had breasts and was being seen by others as females -- female was getting in the way of us of being able to address the goals of treatment.

Q. Did he ever express to you a problem with using the -- I'm sorry. What do you call that that you had him put over -- that he was

putting over his breasts?

A. A binder.

Q. The binder, did he ever -- did Fox ever express a problem with the use of the binder?

A. Yes.

Q. Tell me about that.

A. He was binding his breasts so tightly he was bruising and he was having trouble breathing.

Q. How about in terms of the appearance with the binder, did he indicate whether that was helpful or not?

A. He indicated that he didn't like how he appeared if he was wearing it and he couldn't wear it all the time because of the bruising and the pain and the difficulty breathing.

Q. It says, "Moreover, the significance of the barrier his struggle with his body has presented has increased in recent months as he has not been able to consistently wear his binder due to rib pain. Instead, he has worn oversized clothing and hoped that no one notices." How did that work for her?

A. It didn't. Actually the next sentence

was a recent example of it not working for him.

Q. It says, "Though often that is the case, just 10 days ago, he reported that he was bumped into a female peer during play practice where his female peer felt his breasts as she caught herself leaving him extremely anxious that she would, 'out,' him." Tell me about that.

A. That's the anxiety exactly, that people would not see him as he wanted to present. And he was extremely worried that that would happen all the time.

Q. It says, "Given the above, I am in support of Rowan undergoing top surgery as I believe it would help him present to others as he wishes to." Tell me what you meant by that.

A. I was asked to write a letter of support, and I wrote a letter of support.

Q. Who asked you to write a letter of support?

A. Rowan did.

Q. Did you ask him why he was asking you to write this letter?

A. I don't recall if I asked him why or not.

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Q. Do you recall if he told you why or not?

A. Many times.

Q. And what did he tell you?

A. He told me that he wanted top surgery.

Q. No, no. Did he tell you why the letter, though?

A. I believe that he needed -- I believe that he needed the letter in order to get the insurance to pay for the surgery.

Q. And what about Dr. Chin? Did Dr. Chin ask for this letter, do you know?

A. I have never spoken with Dr. Chin.

Q. Now, it says, "Given the above, I am in support of Rowan undergoing top surgery." And not only does it say you're in support of it, but it gives the reason. It says, "as I believe it would help him present to others as he wishes to." Do you see all that?

A. Yes.

Q. You're still saying this is not a referral letter?

A. It's a letter of support. It's giving --

KENNETH EINHORN, PhD

Q. Is it -- is it a referral letter?

A. No. It's a letter of support.

Q. Did you know that this would potentially go to the surgeon who would be doing the surgery?

A. I did.

Q. I'm sorry?

A. I did.

Q. Okay. And with knowledge that you are telling the surgeon that you're in support of him doing the surgery because it would help him, you don't think that's a referral letter?

A. I don't because it doesn't say it's a referral letter and I'm not referring him to anyone in particular in the letter.

Q. Did you mention anywhere in this letter that you thought that it wasn't indicated?

A. No.

Q. Did you mention anywhere in this letter that you had reservations about him undergoing surgery?

A. No.

Q. Did you mention anywhere in this letter that you thought it was too soon?

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A. No.

Q. Did you mention anywhere in this letter that he had neuropsychiatric testing that showed that he had low executive functioning, was questionably autistic and that he was a troubled kid with low intellectual functioning?

A. No.

Q. Did you mention anywhere in this letter that your records are replete with references to his lack of judgement?

A. No.

Q. Do you think that any of the things that I've just mentioned in the last several questions would be relevant to somebody who was being asked to do this surgery, to remove the breasts?

A. At that time I was asked to write a letter of support for the reasons given in the letter, and I chose to write the letter of support.

Q. But you knew that when you wrote the letter of support that it was going to be relied upon, didn't you?

A. I knew that it was going to be a letter

of support and that at the end of letter if they had any questions that they should contact me.

Q. And when you say you knew it was going to be viewed as a letter of support, you knew that it might go to Dr. Chin and be relied upon by Dr. Chin, correct?

MR. KORNFELD: He can't answer as to what is in Dr. Chin's state of mind, if he relies on something or doesn't.

MR. FIEDLER: I'm not asking him to guess about Dr. Chin's state of mind.

Q. I'm just asking for your state of mind, Dr. Einhorn, when you --

A. This -- this letter clearly indicates that I'm supporting his decision.

Q. And you knew that the letter would be relied upon by whoever he presented to it -- he presented it to, right?

A. I knew it was going to be a letter of support and it was going to be read as a letter of support.

Q. Okay.

A. That's what I knew.

Q. Well, what was your understanding, if

you had an understanding, as to what this letter could potentially mean to Dr. Chin?

A. That it was a letter of support, that this person was seeing a psychologist and the psychologist supported his decision.

Q. Now, the -- the standards of care that was promulgated by the World Professional Association for Transgender Health -- I forget -- were you familiar with those guidelines?

A. Yes.

MR. KORNFELD: You went -- you went over that. He answered that.

MR. FIEDLER: Okay. I'm sorry. I said I forgot.

Q. And there's a section in there about referral for treatment. And it says, surgical treatments for gender dysphoria can be initiated with a referral, it says, from a qualified mental health provider. It says, the mental health professional provides documentation in the chart and/or referral letter of the patient's personal and treatment history, progress and eligibility. Mental health professionals who recommend surgery share the ethical and legal responsibility for

that decision with the surgeon.

Now, I want to ask you about a couple of different parts of what I just read.

A. Okay.

Q. First of all, do you agree that mental health professionals -- in this case, you -- who recommend surgery share the ethical and legal responsibility for that decision with the surgeon?

A. I don't agree that I recommended surgery. I agree that I supported surgery.

Q. Did you at any time tell Mrs. -- I'm sorry. Did you at any time tell Clare or Fox that you were not recommending surgery?

A. No.

Q. Did you at any time tell Dr. Chin that you were not recommending surgery?

A. I have never spoken to Dr. Chin.

Q. Well, would you agree that -- that, being in support of the surgery, you shared the ethical and legal responsibility for the decision?

MR. KORNFELD: Objection.

He's -- he's not a lawyer. He can't answer questions regarding legal responsibilities.

Q. Would you agree that as a mental health

professional that was supporting the decision to undergo the procedure that you shared the ethical responsibility for that -- that decision as a healthcare professional?

A. It's very hard for me to answer. As I'm reading the letter, it's hard to answer.

Q. Now, then the standards of care go on to -- to recommend the content that such -- that such a letter should have. And I'm not going to go through each one except to ask you, did Dr. Chin ever request of you a referral letter?

A. No.

Q. Did Dr. Chin ever request of you any sort of letter?

A. No.

Q. Did Dr. Chin ever -- ever consult you on the issue of whether or not Fox was an appropriate candidate for this procedure?

A. No.

MR. KORNFELD: I'm going to need a bathroom break. All right?

MR. FIEDLER: Go ahead. Take your time.

(A recess was taken from 2:38 a.m. to 2:43 p.m.)

KENNETH EINHORN, PhD

Q. Did you ever discuss with Fox or Clare the possibility of treatments alternative to top surgery?

A. Did I ever discuss -- yes. I mean, they were using a binder.

Q. Okay. Other than the binder did you ever discuss with Fox or Clare the possibility of treatments alternative to top surgery?

A. We had conversations about hormone therapy.

Q. Now, you mentioned binder in your notes, right?

A. Mm-hmm.

Q. Does it say anywhere in any note that you talked about hormone therapy?

A. No. It's the same reason that there's -- there's no --

MR. KORNFELD: It's a yes-or-no question.

A. No.

Q. But you have a recollection of that?

A. Yes.

Q. What did you discuss with them? Was it one of them or both of them?

A. It was with Fox.

Q. And what did you discuss with Fox?

A. I asked -- I asked what they were thinking about with that.

Q. Who's "they"?

A. Fox.

Q. Okay. And so you asked her what are you thinking about when it comes to hormone therapy?

A. I said, "Have you considered it?" yes.

Q. How do you know she even knew about it?

A. Fox was very well aware of the different treatment options for people considering transitioning.

Q. How do you know that?

A. She talked about it all the time.

Q. What did you tell her about hormone therapy?

A. I asked her if she considered it. I didn't say anything about hormone therapy.

Q. What did she tell you in response?

A. She said she didn't want to do that right now. She said she really wanted to have the top surgery.

KENNETH EINHORN, PhD

Q. Did you discuss with -- with Fox or her mom the limitations associated with hormone therapy or top surgery?

A. I did not discuss anything further regarding hormone therapy. I did not -- I was in support of the top surgery. I did not talk about -- I'm not a medical professional. I'm not a surgeon. I wouldn't be able to have that conversation.

Q. Do you feel you played any role in Fox's decision and Clare's decision for this surgery to be performed?

A. I supported it.

Q. Anything in addition to supporting it?

A. I shared information that's available on Google about people's satisfaction with the surgery.

Q. Did you ever encourage Clare to allow her daughter to have this surgery?

A. No.

Q. Did you ever tell Clare in words or substance that suicide is a potential down the road if you don't allow your daughter to have this surgery?

A. No.

Q. Do you feel -- did you ever use Clare to try to -- as a means by which to convince her mother to consent to the surgery on her behalf?

MR. KORNFELD: I'm sorry. Can you read that back.

Q. Did you ever --

MR. FIEDLER: I'll repeat it.

Q. Did you ever use Clare -- I'm sorry. Did you ever use Fox as a means to convince her mom, Clare, to consent to the surgery?

A. No.

Q. Would you agree that before any physical interventions are considered for adolescents there should be extensive exploration of psychological, family and social issues?

A. I mean, I don't know what to do with the word "extensive."

Q. "A lot."

MR. KORNFELD: If you can't answer something --

A. I can't answer.

Q. Do you feel that you explored the psychological, family and social issues with Clare

and Fox as it related to top surgery?

A. I guess I don't have an answer.

Q. Okay. Now, have you heard anything about GNRH analogs?

A. No.

Q. Do you know what GNRH analogs are?

A. No.

Q. Have you heard of any intervention to suppress estrogen or testosterone production?

A. Yes.

Q. When had Fox reached puberty?

A. Before I ever met Fox.

Q. Did you ever recommend that Fox try to decrease the effects of androgens?

A. No.

Q. Did you ever suggest hormonal therapy to masculinize Fox?

A. No.

Q. Do you feel that Fox lived with her gender issues long enough and attempted to deal with her gender issues long enough before undergoing this procedure?

A. I can't answer.

Q. Did Clare ever request of you in words

or substance that you deal with the other issues, for example, anxiety and depression before Fox underwent top surgery?

MR. KORNFELD: Duane, you've asked that question a few times already.

Q. Okay. Have you ever heard the term "regret" used in regards to top surgery?

A. Personally?

Q. Yeah.

A. No. In the other clients that I've worked with who have had top surgery, no.

Q. Well, I think maybe I wasn't clear.

Do you know what the term "regret" means in reference to patients who have had top surgery?

A. Yes.

Q. What does it mean?

A. It means they're -- they regret having the surgery.

Q. And were you aware before Fox underwent this surgery and before you wrote that letter that that was a possibility?

A. Yes.

Q. And what was your knowledge in that

regard as these surgeries related to adolescents?

A. My understanding was that more people regret having knee replacement.

Q. And what are you basing that on?

A. Just looking up statistics on Google about surgeries.

Q. Okay. Now, would you agree that those statistics that you're talking about take into account that patients that undergo this surgery more often than not are appropriately indicated for the procedure?

A. I don't know.

Q. Is it fair to state that the better job one does in selecting the patients for these procedures, the less regret there's going to be?

A. It could be the case.

Q. And would you agree that regardless of the selection process, regret is always going to be a possibility in every patient?

A. Yes.

Q. Would you agree that your medical records from day one till the day that this patient had the surgery does not mention the word "regret" or anything synonymous with it?

A. Yes.

Q. Did you ever discuss the issue of regret with Clare or Fox?

A. We talked about how it was permanent, but we didn't talk about the word "regret."

Q. Now, I briefly made reference to the neuropsychological testing that was performed, but I would like to just ask you an open question.

Generally what did you learn from that testing that you felt was relevant to your treatment of Fox?

A. I learned that there were significant behavior issues. I knew that there was a recommendation for psychiatric intervention that very early in treatment was obvious wasn't something that was going to be happening.

And I knew that her current functioning suggested that she was of low-average intellect and that she presented with a testing profile consistent with somebody who may be on the spectrum.

Q. And did you ever have any conversations with any other therapists or medical providers as it related to Fox that we have not as yet

discussed? And that would include Albany, the gay clinic, your friend, anything.

A. No.

Q. Okay. Did you during the course of your treatment of Fox up to the surgery consult any literature on the -- on the issue of gender nonconformity, transgender, transsexual or top surgery?

A. No.

Q. Now, there did come a point, I think we've established, that you knew that Fox was going to undergo this surgery and, indeed, have it done by Dr. Chin, correct?

A. Yes.

Q. And what was your understanding? I'm not asking you to speak for Dr. Chin, but what was your understanding as to what role Dr. Chin was to play in consenting the patient to surgery and deciding whether or not the patient was a proper candidate for the procedure?

A. I assumed that since he was the surgeon that he would have those in-depth conversations before there was a surgery.

Q. And what in-depth -- tell me, please,

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as specifically as you are able --

A. I would -- I would assume that there would be a conversation about how it's permanent. I would assume there would be a conversation about if anyone has had any regret. I would assume that if he felt there was a need for another medical professional to be involved before surgery he would let them know.

He did never contact me. I put my e-mail on the bottom of the -- on the letter expecting that it might be used. It was never used. I'm not a medical professional.

Q. Well, the other two patients you had referred for the surgery, correct?

A. I did not refer either of them for the surgery. I didn't refer Fox for the surgery, and they didn't ask me for a letter of support.

MR. FIEDLER: Okay. At this point I need a couple of minutes' bathroom break, and then we'll just -- we'll wrap it up. Okay?

MR. KORNFELD: Sure.

MR. FIEDLER: Thank you.

(A recess was taken from 2:58 p.m. to 3:06 p.m.)

Q. When you mentioned earlier that your

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Google research indicated that more people regret knee replacement surgery than top surgery, where did you find that, do you remember?

A. No, I don't.

Q. Do you remember if that -- that statistic involved 16-year-old kids?

A. I don't.

Q. Okay. Would you agree that a 16-year-old is not competent to consent to top surgery?

A. I wouldn't agree. Some people --

Q. Do you think -- given everything we discussed about Fox's testing and psychological conditions, do you think Fox was competent to consent at her age to top surgery?

A. I do.

Q. And what do you base that on?

A. I base that on the way that Fox, or Rowan at that time, was able to gather the information, pursue in a way that they had not pursued many other things in their life, was able to present themselves as far beyond what the testing said they could do.

Q. And --

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A. That's why I chose to support the decision that they made.

Q. And do you feel that Fox emotionally was in an appropriate state to consent to surgery such as this?

A. Yes.

Q. You mentioned that Fox was very knowledgeable. Do you know where Fox was getting her information from?

A. She was doing a lot of research on it. I don't know exactly where.

Q. Well, do you know -- forget about "exactly." Do you have any idea where she was getting her information from?

A. No.

Q. And could you just comment generally on your understanding of the standard of care as it relates to the psychological treatment of adolescents.

MR. KORNFELD: That's too broad of a question.

Q. Would you agree that the standard of care for the psychological treatment of adolescents includes protecting them from harming

themselves?

A. Absolutely. That is the one caveat that's very different when you work with adolescents versus adults, is if they talk about harming themselves or someone else you don't just notify the authorities; you need to make sure that their parents are aware.

Q. I didn't mean in terms of suicide or homicide. I meant in terms of doing something that was not good for themselves.

MR. KORNFELD: That's, again, a little too broad.

Q. Was harmful to their body or their mind.

A. If I responded to every time one of my teenage clients told me that they had a drink or used marijuana, I would be out of practice.

Q. I don't get that. Having a drink or using marijuana is going to harm yourself? We'd all be dead.

My question is -- and I'll ask it this way --

MR. KORNFELD: You're not advocating alcohol or marijuana for adolescents, are you,

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Duane?

MR. FIEDLER: No, not at all. Certainly not on the record.

Q. Let's see if I asked this.

If you felt based upon your evaluation and assessments of Fox that having top surgery was not -- at the time that she had it was not in her best interest, would you agree that the standard of care for a psychologist such as yourself would be to impart that to her and let her know?

A. Yes. And I would not have written a letter of support.

MR. FIEDLER: Okay. I have no further questions.

Thank you. Take care, everybody.

MS. CANN: I have a few.

MR. FIEDLER: Oh, sorry, Deborah.

MS. CANN: That's okay.

EXAMINATION BY

MR. CANN:

Q. So, Doctor, I'm Deborah Cann. I represent Dr. Chin and Caremount.

So gender dysphoria is contained within the Diagnostic and Statistical Manual of Mental

Disorders, is it not?

MR. KORNFELD: Is it in the DSM, you said? Is that your question?

Q. I'm asking if it's in the DSM of mental disorders.

A. Yes, it is.

Q. Okay. So then in and of itself, it is another additional mental disorder or illness from which -- Fox was experiencing during that time?

A. You know what --

MR. KORNFELD: I think it's a diagnosis, not considered a mental disorder.

MS. CANN: Well, I asked the doctor, though, Neil.

MR. KORNFELD: I'm sorry.

MS. CANN: That's okay.

MR. KORNFELD: I thought you asked me.

MS. CANN: No.

A. It's -- it's -- it's certainly talked about in the DSM.

Q. You had referred to the DSM a few times at the beginning of your testimony, right?

A. Yes.

Q. Okay. And to what do you refer to the

DSM for?

A. I make -- the diagnoses that I make are from the DSM.

Q. All right. So and we'll -- the DSM-5 includes gender dysphoria, correct?

A. I believe so. I'm not sure if the new edition does.

Q. Okay. All right. So you personally as -- personally and professionally as a psychologist treating Fox during the timeframe that you did, did you consider it or consider it not to be an additional mental disorder or illness, gender dysphoria, from which Fox was suffering?

MR. FIEDLER: I'll object.

MR. KORNFELD: I'm going to object. I just don't think -- I think it's a mischaracterization. I don't think -- it's not considered an illness.

MS. CANN: It's in the DSM.

MR. KORNFELD: I know, but that doesn't mean it's an illness. It's a diagnosis.

MS. CANN: It's a disorder. It's a mental --

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Q. What's the name of the book, Doctor?

A. The Diagnostic and Statistical Manual.

Q. Of what?

A. I think it's just the Diagnostic and Statistical Manual.

Q. Of Mental Disorders.

It's not a diagnostic and statistical manual of physical disorders or of orthopedic disorders or of gastroenterological disorders, correct? It's a Diagnostic and Statistical Manual of Mental Disorders, correct?

A. Yes.

MR. KORNFELD: I just don't think --

MS. CANN: All right. I got my answer. Thank you.

MR. KORNFELD: Okay.

MS. CANN: And, Nick, I would like a transcript, as we said before.

THE REPORTER: You've got it.

MS. CANN: Okay. Thank you.

MR. KORNFELD: Okay. Thank you, everybody. Have a good weekend.

MS. CANN: You too.

MR. FIEDLER: Take care.

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MR. KORNFELD: Thank you.

MS. LONDON: Take care.

(Time noted: 4:15 p.m.)

A C K N O W L E D G M E N T

STATE OF NEW YORK)
:ss
COUNTY OF)

I, KENNETH EINHORN, PhD, hereby certify that I have read the transcript of my testimony taken under oath on 03/29/2024; that the transcript is a true, complete and correct record of what was asked, answered and said during this proceeding, and that the answers on the record as given by me are true and correct.

_____
KENNETH EINHORN, PhD

Signed and subscribed to
before me this _____ day
of _____, 2024

_____
NOTARY PUBLIC

I N D E X

EXAMINATION OF KENNETH EINHORN, PhD

EXAMINATION BY	PAGE
MR. FIEDLER	9
MS. CANN	159

E X H I B I T S

MARKED FOR IDENTIFICATION

DESCRIPTION	PAGE

(No exhibits were marked)

C E R T I F I C A T E

STATE OF NEW YORK)
:ss
COUNTY OF NEW YORK)

I, NICHOLAS BUCKLEY, a Notary Public within and for the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such an examination is a true record of the testimony given by such a witness.

I further certify that I am not related to any of these parties to this action by blood or marriage, and that I am not in any way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, 2024.

Nicholas Buckley
NICHOLAS BUCKLEY

ERRATA SHEET FOR: KENNETH EINHORN

KENNETH EINHORN, being duly sworn, deposes and says: I have reviewed the transcript of my proceeding taken on 03/29/2024. The following changes are necessary to correct my testimony.

PAGE	LINE	CHANGE	REASON

Witness Signature:_____

Subscribed and sworn to, before me this ___ day of _____, 20 ___.

_____ _____

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